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ORDINANCES

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OF THE

CAPE OF GOOD HOPE.

VOL. IV.

1845—1847.

CAPE TOWN:

A. S. ROBERTSON, 21, ADDERLEY-STREET.

1850.

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ORDINANCES, &c.

No. 1 —1845.] ORDINANCE [Jan. 6, 1845.

For creating certain Visiting Magistrates' Courts at Convict Stations in this Colony.

Preamble.

WHEREAS by the Ordinance No. 7, 1844, entituled "an Ordinance for the discipline and safe custody of the convicts employed upon the public roads," provision has been made for the appointment of certain visiting magistrates to inspect the several gangs of convicts employed upon the public roads of this colony; and whereas it is expedient for the saving, in certain cases, of time, expense, and trouble, that the said visiting magistrates should be empowered to try the respective crimes and offences specified in the 4th and 7th sections of the said Ordinance: Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that courts shall be, and the same are hereby declared to be, erected and established with jurisdiction, as hereinafter defined, in regard to the crimes and offences in the said 4th and 7th sections of the said Ordinance mentioned and set forth; and such courts may adjudge and condemn all offenders in that behalf to such and so much of the punishments in the said sentences respectively mentioned, as they shall see cause to impose or inflict; and such courts shall be courts of record, and shall be holden by and before the visiting magistrate or visiting magistrates (as the case may be) of every convict gang respectively, and shall be holden respectively at the spot or station where the gang, of which the magistrate or magistrates holding any such court shall be the visiting magistrate or magistrates, shall be stationed at the time of the holding of the same.

Visiting Magistrates' Courts created.

Jurisdiction of the same.

2. And be it enacted, that the courts aforesaid shall have and exercise jurisdiction in regard to the crimes and offences aforesaid, only in cases in which the convict, or alleged convict, to be tried, shall be in the custody of the

The said Courts to have jurisdiction only where the party to be tried shall be in the custody of the Superintendent

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of some Convict Gang.

superintendent of some gang of convicts at the spot or station where the said gang shall be stationed; and the court of the visiting magistrate or visiting magistrates of every such lastmentioned gang shall have such jurisdiction as aforesaid, whether such gang be or be not the gang from which the convict or alleged convict is charged with having originally deserted or escaped.

Superintendent to prosecute.

3. And be it enacted, that the superintendent for the time being of the convict gang in the last preceding section mentioned shall, in the absence of any person specially appointed by the Attorney General of the Colony for the time being to appear and act for him in the said court, have the same authority to prosecute in all such cases as aforesaid, as the said Attorney General would by law, if present, have possessed.

Manner of procedure in the said Courts.

4. And be it enacted, that the said courts shall have and exercise the jurisdiction aforesaid without appeal, and that the proceedings shall be carried on therein in such manner and form as shall, for the time being, be lawfully practised by the courts of the resident magistrates of this Colony, in regard to the hearing and determination of criminal cases; and that the judgment of the court of any such visiting magistrate or visiting magistrates as aforesaid, in any such cases as aforesaid, shall have and entail the same consequences precisely as if the same had been pronounced by the court of the resident magistrate held at the same spot or station, under or in pursuance of the provisions of the said Ordinance No. 7, 1844.

Nothing in this Ordinance to affect jurisdiction of Resident Magistrates' Courts.

5. And be it enacted, and declared, that nothing herein contained shall be deemed or taken to affect or impair any jurisdiction, by the said lastmentioned Ordinance or otherwise, now belonging to any of the resident magistrates' courts of this Colony.

Time of commencement of this Ordinance.

6 And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 2.—1845.] ORDINANCE [Jan. 6, 1845.

For fixing the mode of making out Jury Lists for Cape Town and the District thereof.

Preamble.

WHEREAS under and by virtue of the Ordinance No. 84 of 1831, intituled "an Ordinance for altering and amending the law relative to the qualification of persons liable to serve on grand and petty juries, and to the mode of making out and returning lists of the same," certain duties

have been imposed upon the collector of taxes in Cape Town, in regard to the preparation and making out of certain jury lists; And whereas, in consequence of the abolition of the office of collector of taxes, it becomes necessary to make other provision for the performance of the said duties: Be it therefore enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said Ordinance No. 84 of 1831 as imposes upon or requires from the collector of taxes in Cape Town, the performance of any manner of duty in regard of the making out and preparation of any jury list or lists whatever, and so much of the 2d section of the Ordinance No. 13, 1844, entituled "an Ordinance for transferring to certain other officers the duties of the office of collector of taxes" as is repugnant to or inconsistent with the provisions of the Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Certain parts of certain Ordinances repealed.

2. And be it enacted, that the Judge and Superintendent of Police in Cape Town shall be charged with, and he is hereby authorized and required to perform, all and singular the several duties in and by the said Ordinance No. 84 of 1831 imposed upon or required from the said collector of taxes, precisely as if the term Judge and Superintendent of Police were in the said Ordinance substituted for the term collector of taxes, whenever and as often as the lastmentioned term occurs in the said ordinance.

Judge and Superintendent of Police to discharge duty formerly performed by the Collector of Taxes.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Time of commencement of this Ordinance.

No. 3.—1845.] ORDINANCE [Jan. 15, 1845.

For repealing certain Ordinances regarding certain Tolls, in order to make other provision respecting the said Tolls.

Whereas it is expedient, that the central board of commissioners of public roads should be invested with the power of letting and regulating certain tolls, now let and regulated under certain Ordinances formerly made and promulgated in this colony, and that for such purpose, the said Ordinances should be repealed: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Ordinance No. 3 (local), bearing date the 29th day of December 1826, and entituled "an Ordinance for

Preamble.

Certain Ordinances imposing Tolls repealed

the better regulation of the turnpikes on the road leading from Cape Town to Simon's Town, through the upper and lower gates of the military lines, and for fixing the tolls to be levied thereat;" and the Ordinance No. 74, bearing date the 21th day of May 1830, and entituled "an Ordinance for creating a toll on the new road over the Hottentot's Holland mountain;" and the Ordinance No. 91, bearing date the 9th day of June 1832, and entituled "an Ordinance for imposing a new rate of toll duties at the Houw Hock Pass;" and the Ordinance No. 7 (local), bearing date the 18th day of December 1833, and intituled "an Ordinance for erecting a toll on the new road through Howisons's Port;" and the Ordinance No. 8 (local), bearing date the 7th day of January 1834, and intituled "an Ordinance for regulating the toll at Port Elizabeth," shall, respectively (except so far as the same, or any of them, repeal any former laws or ordinances), be repealed, and the same are hereby repealed accordingly.

Repeal not to affect subsisting Contracts.

2. And be it enacted, that notwithstanding the repeal aforesaid, every contract or agreement which shall have been, before the time of the commencement of this Ordinance, made or entered into, under or by virtue of any of the Ordinances hereinbefore mentioned and repealed, for or in respect of the farming, letting, or hiring of any of the tolls aforesaid, and which contract or agreement shall at the time of the commencement of this Ordinance still subsist, shall remain and continue in full force and effect, until the same shall come to expire by effluxion of time, or be otherwise lawfully determined, and that the rights and duties of the person farming, leasing, or hiring any of the said tolls shall be and remain wholly unaffected by the repeal aforesaid, precisely as if the ordinance under or by virtue of which such contract or agreement was made or entered into had never been repealed.

The Tolls in question to be under the administration of the Central Board.

3. And be it enacted and declared, that from and after the expiration or determination of every such contract or agreement as aforesaid, it shall and may be lawful for the central board of commissioners of public roads, nominated and appointed under and by virtue of the provisions of the Ordinance No. 8, 1843, entituled "an Ordinance for improving the public roads of this colony," to assume and take upon them the management and regulation of all or any tolls to be thereafter legally taken and levied at the several and respective places in the respective Ordinances hereby repealed mentioned and set forth, or at such and so many of the said places as shall be deemed expedient; and also, that from and after such expiration or determination of any such contract or agreement as aforesaid,

every provision in the said Ordinance No. 8, 1843, contained, regarding the tolls to be erected, established, and appointed by the said board, shall extend and apply to such one or more, if any, of the said tolls, as may be continued and kept up by the said board,—precisely as if no tolls had ever been before that time imposed or taken at any of the places aforesaid, and as if the said board, when, as aforesaid, assuming and taking upon them the management and regulation of any of the tolls aforesaid, was then, for the first time, by virtue of the powers contained in, and conferred by, the said Ordinance No. 8, 1843, duly erecting, establishing, and appointing a toll bar or gate at the spot or place where the particular toll in question had formerly been taken.

Certain Sections of Ordinance No. 8, 1843 made applicable to the Toll Bars, &c. already erected.

4. And be it enacted, that for all the purposes of the 55th, 56th, and 57th sections of the said Ordinance No. 8, 1843, every toll bar, toll gate, toll house, building or work of any kind whatever, already existing at any such spot or place as aforesaid, shall, from and after the time of the commencement of this Ordinance, be deemed and taken to have been erected and made under the authority of the said Ordinance.

Time of commencement of this Ordinance.

5. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 4.—1845.] ORDINANCE [Jan. 30, 1845.

For declaring certain Guano to be the property of Her Majesty the Queen.

Preamble.

Whereas considerable quantities of the substance commonly called "Guano" have been found in and upon certain Islands, or Rocks in the Sea, within the limits of this Colony and its dependencies; And whereas it is possible that further quantities of the said substance may exist, and be hereafter discovered, at other places within the said limits; And whereas doubts exist whether the said substance, being merely, or mainly, the droppings of unreclaimed birds of a base nature, can, in law, though a merchantable article, be deemed to be property, or possessed of legal value; And whereas it is expedient that such doubts should be removed, and that all of the said substance lying and being in and upon any place or territory within the limits aforesaid, and not granted or belonging to any private individual, should be declared to be the property of Her Majesty the Queen, and that provision should be made for preventing or punishing the unauthor-

ized removal of the same: Be it, therefore, enacted and declared by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof,

All Guano on Government property to be the property of Government.

that all of the said substance commonly called *Guano*, which may now, or at any time hereafter, be found lying and being in or upon any island, rock, or other place, not being the property of any private person or persons, and within the limits of this Colony and its dependencies, shall be deemed and taken to be property, and to belong to, and be in the lawful possession of, Her Majesty the Queen, Her Heirs and Successors.

Penalty upon illegal removal of Guano.

2. And be it enacted, that if any person or persons shall remove, or cause to be removed, from any such island, rock, or place as aforesaid, without the leave of the Governor of this Colony, for the time being, first had and obtained; or if any person or persons shall receive and have any of the said property, knowing the same to have been so removed without such leave as aforesaid; every such person shall, for every such offence, besides paying and making good the full value of the property illegally removed, incur and be liable to a penalty not exceeding One Hundred Pounds Sterling, whereof one-half shall be paid to any person who shall have given information touching the commission of the offence, and the other half shall be paid to the Colonial Treasury. And in default of immediate payment of such penalty, the person condemned to pay the same may be imprisoned with or without hard labour, until he shall pay the same; but so, however, that he shall not be detained for any period exceeding three months. But it shall be competent for the Governor, in any case in which it shall appear to him to be just and proper so to do, to remit the whole, or any part, of any such penalty as aforesaid.

What acts to constitute separate offences.

3. And be it enacted, that every trip or voyage in which any vessel, boat, or raft, shall receive and remove from any such island, rock, or place as aforesaid, any of the said property, in order that the same may be put on board any other vessel, or delivered or discharged in any other manner whatsoever, shall be deemed to be a separate offence on the part of every person manning, navigating, or conducting such vessel, boat or raft; and in case any such property as aforesaid shall happen to be removable, and shall be removed, otherwise than by water carriage, then every separate instance or occasion upon which any of the said property shall have been, in any manner, carried away, shall constitute a separate offence on the part of every person carrying the same away; and in regard to persons receiving the said property, knowing the same to have been

removed without leave, every act of receiving any quantity of the same at any one time, shall also constitute a separat offence.

Courts of the Resident Magistrates to have jurisdiction.

4. And be it enacted, that all offences committed in contravention of this Ordinance may lawfully be prosecuted in the court of any resident magistrate in this Colony.

This Ordinance not to affect existing rights under lease, if any.

5. And be it enacted, that nothing in this Ordinance contained shall be held or construed so as to impair or affect the right, if any, which any person or persons may now by law possess or claim in regard to the substance aforesaid, and the removal of the same, under and by virtue of any lease or contract with the Local Government of this Colony, relative to any island or other place, on which such substance shall be found; but every such lease or contract shall be construed, and the rights of the respective parties thereto shall be ascertained and determined, precisely as if this Ordinance never had been passed.

Commencement of this Ordinance.

6. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 5.—1845.] ORDINANCE [Feb. 27, 1845.

For authorising the appointment of a Vestry and Churchwardens for St. Paul's Church, Rondebosch.

Preamble.

Whereas it is expedient, that the inhabitants of Rondebosch, in the Cape District, and the parochial limits thereof, and holding communion with the United Church of England and Ireland, as there by law established, should be invested with the right and privilege of choosing and appointing, under certain regulations, a vestry and churchwardens for the better and more effectual administration and management of all matters connected with St. Paul's church, at Rondebosch, and that the said vestry and churchwardens, after having been duly appointed, should possess certain powers, and perform certain duties, as the same are usually possessed and exercised by such officers according to the customs and usages of the said united church of England and Ireland; And whereas, on the appointment of the said vestry and churchwardens, it is expedient that the office of trustees, as at present instituted, should cease and determine:

Annual Meeting for the election of a Vestry.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that on and after the promulgation of this Ordinance, and annually afterwards

on the same day, a general meeting of the inhabitant householders of Rondebosch aforesaid, and of the parochial limits thereof, holding communion with the united church of England and Ireland as there by law established, shall be holden at Rondebosch, fourteen days' notice whereof shall be given by the officiating minister of the said church for the time being, by promulgating during divine service, and by notice posted on the doors of the church, or by advertisement in the *Government Gazette*, for the purpose of electing a vestry; and it shall and may be lawful for the inhabitant householders as aforesaid, or the greater part, assembled at such meeting, to elect from among themselves any number of persons not exceeding eight, in manner and subject to the provisions hereinafter mentioned; who, together with the officiating minister for the time being, shall form a vestry, charged with the duties, and invested with the powers, hereinafter mentioned.

Election of Auditors.

2. And be it further enacted, that two other persons not being members of the said vestry shall likewise be elected at such meeting as aforesaid, to be auditors of the accounts of the said vestry.

Qualification of Members of Vestry.

3. And be it further enacted, that every inhabitant householder, being a member of, and holding communion with, the church aforesaid, and within the parochial limits thereof, shall be eligible to be a member of the said vestry. Provided always that no person shall be entitled to vote at such election, or be eligible to be chosen a member of the vestry or an auditor of the accounts thereof, so long as (legal demand having previously been made) any just claim had upon him by the said vestry, as such, shall remain unsatisfied.

Lists of persons eligible to lie open for inspection.

4. And be it enacted, that a list of all persons eligible, according to the provisions of the foregoing section, shall be prepared by the officiating minister so long as there are no churchwardens appointed, and when churchwardens shall have been appointed as is hereinafter provided, then by the officiating minister and churchwardens conjointly, and shall be open for the inspection of all persons entitled to vote, at the election of the said vestry and auditors, at least fourteen days before any election is to take place.

Election, how made.

5. And be it further enacted, that at every such general meeting as aforesaid, the election shall be carried on by lists, duly signed by such inhabitant householders aforesaid, respectively, and containing the names of the persons for whom they vote to be elected as vestry men and auditors.

Appointment of Chairman.

6. And be it further enacted, that the officiating minister for the time being shall preside as chairman at the meetings

of the said vestry; provided that in his absence from any such meeting, one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided, the chairman or acting chairman shall have a casting vote in addition to his own.

Quorum, how constituted.

7. And be it further enacted, that four members of the said vestry, or three members besides the chairman, shall from a quorum, and shall be competent to perform all matters and things which may be done by the vestry under and by virtue of any of the provisions of this Ordinance.

Rules to be framed for management of the Church.

8. And be it further enacted, that it shall and may be lawful for the said vestry, so from time to time constituted and appointed, to frame, adopt, alter, or rescind such rules, orders and bye-laws as may to them appear expedient for their guidance in the discharge of their duties, and for more effectually executing the provisions of this ordinance, and also to take such order for the management of the said church as shall to them seem expedient, provided, that the said rules, orders, or bye-laws contain nothing repugnant to law, or to the tenor of this Ordinance, or to the customs and usages of the united church of England and Ireland, as there by law established.

Trustees to deliver Deeds, &c., and Monies to the Vestry.

9. And be enacted, that the trustees of the church aforesaid shall, upon the appointment of the said vestry, deliver over to the said vestry all deeds, books, and papers relating to the church, in their custody or power, and all sums of money in their possession or control; and the office and duties of the said trustees shall thereupon cease and determine.

Vestry to have powers of Trustees, and other powers to be specified.

10. And be it enacted, that the said vestry so, from time to time, constituted and elected by such members of the said church as aforesaid, shall and may have and exercise all the same powers and rights and duties respecting the said church, and the care and government thereof, and the administration of the grounds, funds, rents, and revenues thereof, and all other matters and things relating to the same, as are now possessed and exercised by the trustees, together with such other laws, and rights, and duties as are hereinafter specified.

Vestry to compel payments and make contracts.

11. And be it enacted, that it shall and may be lawful for the said vestry for the time being, to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order, by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform, and execute, or compel performance and execution of, all such contracts and agreements, matters and things, as they

shall, from time to time, deem necessary for the good of the church aforesaid.

To bring and defend suits.

12. And be it further enacted, that it shall and may be lawful for the said vestry, as such, from time to time, to commence and maintain all such suits and actions in any competent court of this colony as they shall deem necessary in performance of the trust reposed in them, against any person, in the name of the vestry of St. Paul's church at Rondebosch, without specifying the christian or surnames of the members of the vestry; and no action shall abate by reason of the death or removal, or the going out of office, of any individual member thereof.

Vestry to be sued in regard to all matters connected with the Trust.

13. And be it enacted, that all suits or actions, the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract or other matter or thing made or entered into, or performed by the said vestry in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said vestry, shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts to be kept and to lie open for inspection.

14. And be it enacted, that the said vestry shall keep an account wherein they shall enter all monies received and paid by them under and by virtue of the provisions of this Ordinance; which account the auditors or either of them may inspect at all reasonable times. And the said account, together with any report of the auditors, or either of them, thereon, shall be laid before the members holding communion with the said church at the general annual meeting aforesaid, and published, if requisite, for general information.

Churchwardens—appointment and duty of.

15. And be it enacted, that the said vestry shall forthwith on their appointment, or as soon as conveniently may be, choose out of their own number two persons to be churchwardens, who shall perform and execute all lawful acts and matters and things for the good order and decency of behaviour, to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial ground attached to the said church in decent order and properly fenced; and for discharging all other duties which usually devolve on churchwardens in the united church of England and Ireland, so far as the same may be applicable to this colony.

Administration of

16. And be it further enacted, that the said church-

wardens shall keep an exact account of all collections of money made, from time to time, in the said church for any charitable or religious purposes, connected with the said church or congregation; and the said churchwardens, together with the officiating minister for the time being, shall faithfully administer the same, or see that they be faithfully administered and appropriated in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes and received in trust by them, in virtue of their office, shall be subject to all the same regulations as the general church fund and account of the vestry.

charitable collections.—Accounts thereof to be subject to inspection

17. And be it enacted, that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid, duly audited, together with all vouchers, sums of money, or securities held by them, in virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year; provided always, that the churchwardens thus vacating office shall be eligible to be re elected in case they are continued as members of the vestry.

Time of Churchwardens' continuance in office; eligible to be re-elected.

18. And be it further enacted, that in case any member of the vestry shall die or desire to resign, or shall be removed, or for any other lawful cause shall vacate his office, it shall and may be lawful for the surviving or other members of the said vestry, to decide whether a special general meeting shall be called, for the purpose of electing another member in the place of the one so dying, or desiring to resign, or being removed; or whether his place shall remain vacant until the next general annual meeting, to be holden as aforesaid. Provided always, that in case the members of the said vestry decide that a special general meeting shall be holden for the purpose aforesaid, the same notice shall be given thereof, and the same proceedings shall be observed thereat, as in case of the general annual meeting is provided.

Vacancies in Vestry how to be filled up.

19. And be it enacted, that all the pews and sittings in the said church, with the exception of a reasonable proportion of free sittings reserved for the poor, shall and may be let by the vestry by the year, or for any shorter period, to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall appointed by the vestry; and the holder of any pew so rented

Pews and Sittings (except those for the poor) to be let by the Vestry, and how.

shall and may possess and occupy the same by himself or his assigns, without hinderance or disturbance by any person whatsoever, until the end of the said term, provided he shall continue to pay the rent affixed to the same at the time whereon, and in the manner in which, the same shall be made payable; provided always, that nothing in this section shall be construed to interfere with the claims of any person at present holding sittings in the church.

Remedy when Pew Rent in arrear 28 days.

20. And be it enacted, that it shall and may be lawful for the vestry, whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew, forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance, without any other form or proceeding whatever; provided, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear by action in any competent court.

Rites at Burial.—No Burial within or under the Church.

21. And be it further enacted, that no burial shall take place within, or under, the said church; but the burials of all persons according to the rites and ceremonies of the church of England shall take place in the burial ground consecrated and allotted, or which may hereafter be consecrated and allotted to the said church for that purpose; and the vestry shall have the right to demand and receive reasonable fees for the permission to bury in the burial ground of the said church.

Monuments and Vaults —fees payable for the same.

22. And be it enacted, that it shall and may be lawful for the officiating minister and churchwardens for the time being, to permit any monument to be erected or placed in such convenient parts of the said church, or of the burial ground belonging thereto, or vaults to be dug and made in the said burial ground, upon payment to the fund of the said church, for such permission, of such reasonable fee as shall be affixed by the said vestry for such permission according to the terms thereof.

Rights of the owner of Monument or Vault.

23. And be it further enacted, that it shall and may be lawful for any person or persons erecting or placing any monument in the said church, or digging or making any vault in the said burial ground, by and with such permission as aforesaid, to have, maintain, and keep up such monument or vault according to the terms of such permission, to and for the sole and separate use of the said person or persons, or his or their heirs, for ever:—Provided always, that in case any such monument as aforesaid is

suffered to fall into decay and the person or persons to whom the said monument appertains, neglect to repair the same, it shall and may be lawful, after a general notice of such intention, to remove the same.

24. And be it enacted, that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of by all judges, magistrates, and others, without being specially pleaded, and shall commence and come into operation as law from and after the promulgation thereof. Public Ordinance—to commence from promulgation.

No. 6.—1845.] ORDINANCE [March 10, 1845.

For substituting Declarations in the place of certain Oaths; and for the suppression of voluntary and extra-judicial Oaths and Affidavits.

WHEREAS it has been found that to reserve the imposition of Oaths, as much as may be, for judicial proceedings, and such other weighty and important affairs as obviously require a recourse to the most solemn and effectual means of eliciting truth, has a direct and salutary tendency to establish and preserve a proper reverence for the nature and obligation of an Oath; And whereas all Oaths imposed merely for the protection of the public revenue, and matters of a like nature, are at variance with the principle aforesaid, and, by weakening amongst the people generally the force of the religious sanction, fail, in a great measure, to secure the objects contemplated by their enactment; And whereas it is expedient, that such Oaths should be abolished, and that Declarations should be substituted in their room and stead: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of any of the Ordinances hereinafter mentioned, and of any former law or usage heretofore in force in this colony, as is repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be, and the same is hereby, repealed. Preamble. Repugnant or inconsistent laws repealed.

2. And be it enacted, that in the room and stead of every affidavit or affirmation required by the Ordinance No. 60, entituled "An Ordinance for preventing the mischiefs arising from the printing and publishing newspapers, and papers of a like nature, by persons not known, and for regulating the printing and publication of such papers in other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Declarations substituted for oaths in certain cases.

libels;" and that in the room and stead of the oath referred to and directed in the 8th section of the Ordinance No. 7—1834, entituled "An Ordinance for regulating the trade in gunpowder within this colony;" and that in room and stead of the several respective oaths referred to and directed in the 9th section of the Ordinance No. 6—1844, entituled "An Ordinance for regulating sales by auction;" and that in room and stead of the several and respective oaths referred to and directed in the Ordinance No. 18—1844, entituled "An Ordinance for regulating the payment of transfer duty in this colony;" and that in room and stead of the several respective oaths referred to and directed in the Ordinance No. 11—1844, entituled "An Ordinance to enable the Cape of Good Hope Trust and Assurance Company to be appointed by that name, as trustees and tutors, and to sue and be sued in the name of the secretary;" and that in the room and stead of any oath which by any official regulation in any department of or under the Executive Government of the colony might, but for the passing of this Ordinance, be required to be taken by any person for the purpose of verifying any account, entry, or return, or for any other purpose whatever,—there shall respectively be made and subscribed a Declaration in the form set forth in the Schedule hereunto annexed, but to the same effect, nevertheless, as the oath, affidavit, or affirmation which would, but for the passing of this Ordinance, have been in the same case taken or made, and every such declaration shall be made by and before the same persons respectively, by and before whom the particular oath, affidavit, or affirmation in the room and stead of which such Declaration shall be made, would, but for the passing of this Ordinance, have been made or taken.

Penalty for declaring falsely.

3. And be it enacted, that in any case when a Declaration shall be substituted for an oath, affidavit, or affirmation, by virtue, or in pursuance of the provisions of this Ordinance, any person who shall wilfully and corruptly make and subscribe any such Declaration, knowing the same to be untrue in any material particular, shall be deemed to be guilty of the crime of contravening the provisions of this Ordinance, and shall, upon conviction thereof, suffer such punishment as shall be by law provided for the crime of Perjury.

Extra-judicial oaths and affidavits forbidden

4. And whereas voluntary and extra-judicial Oaths have been occasionally administered by resident magistrates and justices of the peace, in regard to matters wholly unconnected with any suit, inquiry, or proceeding at law, and not in anywise pending or at issue before such magistrates

or justices; and whereas the practice of administering such oaths is one productive of injurious consequences, and which should be totally suppressed: Be it therefore enacted that it shall not be lawful for any magistrate or justice of the peace, or other person authorized to administer an oath, to administer, or cause, or allow to be administered any oath, affidavit, or solemn affirmation touching any matter or thing whereof such magistrate, justice, or other person hath not or doth not believe himself to have jurisdiction or cognizance, under and by virtue of some law or ordinance in force at the time being.

This Ordinance not to extend to oaths taken in courts of justice, or under the Ordinances No. 97, and No. 5, 1843.

5. And be it enacted, that nothing in this Ordinance contained shall extend or apply to any oath, affidavit, or solemn affirmation, which now is or hereafter may be taken or made in the course of any proceeding in any court of justice, or in the course of any proceeding under Ordinance No. 97, entituled "An Ordinance for enabling certain persons having respectively the just, lawful, and undisputed right to certain lands and houses, to procure the same to be enregistered as their property in the land registry;" or in the course of any proceeding under Ordinance No. 5—1843, entituled "an Ordinance for regulating the due collection, administration, and distribution of insolvent estates within this colony."

Commencement of this Ordinance.

6. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Schedule.

I, A. B., do solemnly and sincerely declare that *(here set forth the effect of the oath, affidavit, or solemn affirmation for which the declaration shall be substituted);* and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Ordinance No. 6.—1845, entituled "An Ordinance for substituting declarations in the place of certain oaths, and for the suppression of voluntary and extra-judicial oaths and affidavits."

Declared, &c.

No. 7.—1845.] ORDINANCE [March 25, 1845.

For authorising a Sum of Money to be raised in Shares, for building a Church at Fort Beaufort.

Preamble.

WHEREAS, several persons being desirous of erecting a Church at Fort Beaufort, for the celebration of Divine Service according to the rites of the United Church of

England and Ireland as by law established, and being ready and willing to raise and provide, by way of loan, for that purpose, a certain sum of money as hereinafter mentioned, at a public meeting of the said persons, holden at Fort Beaufort on the 15th day of November, 1843, a committee of management was appointed for carrying their intention into effect; And whereas His Excellency the Governor has agreed to grant from the Treasury of this Colony, as a donation towards the building and completing the said Church, to the persons who shall undertake and become bound for completing the same, the sum of One Hundred Pounds; And whereas the Society for Promoting Christian Knowledge hath agreed to grant the sum of One Hundred Pounds, and the Society for the Propagation of the Gospel in Foreign Parts hath agreed to grant the sum of One Hundred Pounds, as donations toward the building of the said Church; And whereas several other persons have agreed to subscribe certain sums of money by way of donation, for furthering the building and completing the said Church;—And whereas at a public meeting of the persons interested in the said Church, holden pursuant to notice thereof on the 17th December, 1844, it was agreed and resolved by the said persons, that in order to raise a sum of money, amounting, together with the said sum of money agreed to be granted by His Excellency the Governor from the Colonial Treasury as aforesaid, and the said sums of money agreed to be granted by the Society for Promoting Christian Knowledge, and by the Society for the Propagation of the Gospel in Foreign Parts, and the said other donations, to the sum of Eight Hundred Pounds, being near or about the estimated cost of building and completing the said Church, a certain number of shares should be disposed of, that is to say, One Hundred shares at Five Pounds each:

And whereas the following persons have agreed to take shares in the said loan as aforesaid, that is to say:—

Charles Holliday and John Vaughan,—four shares each.

Robert Bovey, John Blakenay, William Ayton, William Gilbert, and George Gilbert,—three shares each;

John Holliday and Bradshaw Daniel Bell,—two shares each;

William Parrott, Meent John Henry Borcherds, George McKay, the Rev. Herbert Beaver, Philip Norton, William Andrews, William Nelson, Charles Blakeway, David Mills, Stephen Humphreys, the Rev. James Barrow, the Rev. John Heavyside, Charles Burton, Richard Ralph, Thomas Foden, John North Annan, George Broster, and Ezekiel Hams,—one share each:

1. And whereas the said persons have made application, that an Ordinance may be passed to sanction and confirm the plan adopted at the last mentioned meeting, and to provide for carrying the same into effect: Now, therefore, be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the said persons who have already agreed, and all such as shall by virtue of any of the provisions of this Ordinance hereafter agree, to take shares in the said loan, to raise and provide in manner and for the purpose aforesaid such a sum of money as, together with the said sum so to be granted from the Colonial Treasury, and the said sums so to be granted by the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts, and the said donations, shall amount to the requisite sum for building and completing the said Church; and it shall and may be lawful for such persons to become shareholders in the said loan, and to take such shares therein (not exceeding by any one person the number of ten shares) as such persons have already agreed, or shall hereafter agree, to take in the said loan, until the whole number of One Hundred shares shall have been disposed of.

Authority given to raise certain monies on loan by shares.

Of the Shareholders, their Rights and Privileges.

2. And be it enacted, that no share shall be transferable by any holder thereof, or any right or interest therein, until all the calls thereon shall have been paid as hereinafter mentioned; but after the said calls shall have been paid, it shall and may be lawful for any shareholder to sell or transfer his share or shares, and all his right and interest in respect thereof, to any other person, by endorsement on the said share, or otherwise, as he shall see fit; Provided, however, that no sale of any such share shall take place by any public auction, but shall be by private contract only: and that the person to whom any share or shares shall be sold or transferred as aforesaid shall forthwith give notice thereof to the trustees to be elected in manner hereinafter mentioned.

Shares, when and how saleable and transferable.

3. And be it enacted, that the sums advanced by shareholders in respect of their several shares shall bear interest from and after the first day to be fixed by the trustees after the said Church shall be erected and completed, and open for Divine Service therein, and not sooner.

Interest upon shares.

4. And be it enacted that all shareholders in the said loan shall, at all public meetings of the shareholders, have the right of voting in the election of trustees, and in all matters relating to the erection of the said Church, and

Shareholders' right of voting.

the management of the funds thereof, until the said loan shall have been wholly repaid and discharged, according to the number of their respective shares; that is to say, the holder of one share shall be entitled to one vote; the holder of two or three shares, to two votes; the holder of four or five shares, to three votes; the holder of six or seven shares, to four votes; and the holder of eight, nine, or ten shares, to five votes.

Number of free sittings.

5. And be it enacted, that on the completion of the said Church, a part of the whole number of sittings shall be appropriated to the use of the public, as free sittings, and that the number of free sittings shall bear the same proportion to the whole number of sittings as the sum raised by donations shall bear to the whole sum raised by shares and donations together.

Preference of shareholders in regard to renting pews.

6. And be it enacted, that on the completion of the said Church, and after the proper number of pews and sittings shall have been set apart and allotted for the use of the Minister, and the Churchwardens and public aforesaid, all shareholders shall have a right to become each the renter of one pew in preference to any other persons who possess no shares, and the shareholders shall amongst themselves have priority in the choice of pews of whatever size, or seats not exceeding six, according to the number of their shares; the holder of the greater number of shares to have the prior choice, and the choice of holders of an equal number of shares to be determined, if need be, by ballot amongst them: Provided, however, that it shall and may be lawful for the trustees, at their discretion, upon the application of any shareholder, whose family may require a greater number of seats in the said Church than six, to permit and allow such shareholder to choose two adjoining pews.

No second choice in respect of the same shares until the pew first chosen has been relinquished.

7. And be it enacted, that the trustees shall keep a book or plan, wherein shall be entered the names of all shareholders in the order of the number of shares taken by them, the numbers of their said shares respectively, and the number and description of the pew chosen by each shareholder in respect thereof; and every shareholder shall, on making his choice as aforesaid, sign his name in a column opposite to the said entry, in acknowledgment of the truth thereof, and no second choice shall be afterwards made by any holder of the same share, or any of them, except upon the pew or pews so chosen as aforesaid being first relinquished and given up.

Nature of shareholder's right in pews.

8. And be it enacted, that upon any shareholder having duly made choice of a pew, the said shareholder, his heirs, and assigns, shall and may for ever afterwards possess and

occupy the same, without the hindrance or disturbance of any person whatever, so long as he or they shall continue to pay the rent affixed thereon, when and as the same shall become due and payable, and shall continue to hold the share or shares in respect of which the said pew was chosen, or the same shall have been paid off by the trustees by virtue of any of the provisions of this Ordinance.

General meetings of shareholders, when and how holden.

9. And be it enacted, that a general meeting of the shareholders shall be holden on the first Wednesday of May in every year, at such place as shall be appointed by the trustees for that purpose, and notice whereof shall be given by them by advertisement in one of the newspapers of this Colony, twenty-one days at least before the same is to be holden; and it shall and may be lawful for the trustees, or the auditors, or either of the auditors, to be elected as hereinafter mentioned, at any time, to call a general meeting of the shareholders, upon giving the like notice thereof.

Of the Trustees and Auditors, their Powers and Duties.

Time and manner of electing first trustees and auditors.

10. And be it enacted, that, as soon as conveniently may be, after the passing of this Ordinance, a general meeting of the shareholders shall be holden at Fort Beaufort, notice whereof shall be given by the said committee of management, by advertisement in one of the public papers of this colony, twenty-one days at least before the said meeting is appointed to be holden, for the purpose of electing trustees and auditors; and it shall and may be lawful for the said shareholders, or the greater part assembled at such meeting, to elect out of the said shareholders any number of persons, not exceeding nine, to be trustees, and two other persons to be auditors of the accounts of the said trustees.

Time of trustees holding office.

11. And be it enacted, that the trustees so elected by the shareholders, and such as shall be afterwards elected upon the death, resignation, or removal of any trustee, as hereinafter mentioned, shall continue in office until the first Wednesday of May next after the said Church shall be erected and completed; and that upon the said first Wednesday of May, and yearly afterwards on the same day, three of the said trustees shall go out of office, and three other trustees shall be elected instead of them, by and out of the shareholders, in manner aforesaid, until the whole of the first appointed and preceding trustees shall have been relieved; and the order of their so going out of office shall, if necessary, be determined by ballot amongst them.

Election of auditors.

12. And be it enacted, that two persons, not being trustees, shall be elected by and out of the shareholders, yearly, on the first Wednesday of May to be auditors of the accounts of the said trustees.

Committee of management to deliver all books, papers, and funds to the trustees.

13. And be it enacted, that the said committee of management shall, upon the election of trustees as aforesaid, and upon their acceptance of the said office, deliver over to the said trustees all deeds, books, plans, papers, and vouchers relating to the said Church in their custody or power, and all and any sums of money, donations, or subscriptions given or subscribed for the purpose aforesaid, or securities for the same, in their possession or control; and the said committee of management, and the office and duties thereof, shall thereupon cease and determine.

Purposes for which the trustees shall hold the funds in trust.

14. And be it enacted, that the said trustees, and all others who shall, from time to time, be hereafter elected as trustees under any of the provisions of this Ordinance, shall, during the time of their continuance in office, stand and be possessed of all the said sums of money, donations, and subscriptions, and of all such sums of money as shall at any time hereafter be granted to them from the Colonial Treasury as aforesaid, or from the Societies for Promoting Christian Knowledge, and for the Propagation of the Gospel in Foreign Parts, or shall arise from payments made by the shareholders in respect of their said shares, or otherwise, and of all such donations and subscriptions as shall at any time hereafter be given or subscribed for the purpose aforesaid, or in aid of the funds of the said church, and of all rents and revenues arising from the letting of pews, fees for placing monuments in the said church, or in the burial ground, belonging thereto, or for digging vaults in the said burial ground, or otherwise, upon trust in the first place, and until the said church shall be erected and completed; to cause the said church to be erected and completed according to such plan and specification thereof as shall be approved of and adopted by them, and from and after the erection and completion of the said church, upon trust to pay and apply the said sums of money, donations, subscriptions, rents, and revenues, in manner following, that is to say: in the first place, to pay thereout the cost of all necessary repairs and expenses in and about the said church, for repairing, keeping up, and maintaining the same; secondly, in payment of the interest, together with any arrears thereof due to the several shareholders on the sums advanced by them on their respective shares, in an equal rate, when and as the funds at their disposal shall enable them so to do; and lastly upon trust to pay and apply the residue

thereof in discharge of the loan advanced by the shareholders whenever and as often as the said residue shall be sufficient to pay off a part of the said loan, at a rate of not less than five shillings sterling upon each share, until the whole of the said loan shall be paid off and discharged.

Power of the trustees to enforce payment of monies due to church fund; to make contracts, &c.

15. And be it enacted, that it shall and may be lawful for the trustees to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to them under and by virtue of any of the provisions of this Ordinance, and in their own names to make and enter into, perform and execute, and compel the performance and execution of, all such contracts and agreements, matters and things, as they shall from time to time deem necessary for erecting and completing the said church as aforesaid.

Actions, how to be brought by the trustees.

16. And be it enacted, that it shall and may be lawful for the trustees, as such, at all times and from time to time as they shall see fit, to commence and maintain all such suits and actions in any competent court in this colony as they shall deem necessary in performance of the trust reposed in them against any shareholder or other person whatsoever, and all such suits and actions shall and may be brought by them in the name of the "*The Trustees of Saint John's Church at Beaufort*" (being the name given to it by His Excellency the Governor), as the case may require, without specifying the christian or surnames of the trustees; and no action shall abate by reason of the death or removal, or going out of office, of any trustee.

Actions, how to be brought against the trustees.

17. And be it enacted, that all suits or actions, the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract or agreement, or any other matter or thing made or entered into, done or performed by the said trustees in the execution of the said trust, or which shall arise or accrue to any person whatsoever against the said shareholders jointly, shall be brought by such person against the said trustees in manner and in the name aforesaid, and not against any individual trustee or trustees, shareholder or shareholders.

Power of trustees to call on shareholders for payment.

18. And be it enacted, that it shall and may be lawful for the trustees, from time to time, to call upon the shareholders for such payments in respect of their said shares, as, together with the donations and sums of money to be granted from the Colonial Treasury, and by the Societies for Promoting Christian Knowledge and for the Propagation of the Gospel in Foreign Parts as aforesaid, they may deem necessary for carrying on the building and completing the said church as aforesaid. Provided, however,

that no such call shall at any one time exceed one-third part of the amount of the said shares, and that the whole of such calls shall not exceed the amount of Five Pounds in respect of each share.

Calls to be advertised.

19. And be it enacted, that the trustees shall cause all calls to be made by them to be advertised in one of the public newspapers of this colony, together with the time and place appointed by them for payment thereof, twenty-one days at least before the said time.

Shares how forfeited.

20. And be it enacted that if any shareholder shall neglect or refuse to pay, at the time and place appointed for that purpose, his proportion of any lawful call made by the trustees upon the shareholders as aforesaid, and the same shall be in arrear for the space of forteen days next after the said day appointed for payment, it shall and may be lawful for the said trustees, if they shall think fit, to declare and pronounce the share or shares of such shareholder to be forfeited, and the same shall thereupon be forfeited accordingly; and it shall and may be lawful for the said trustees to dispose of such forfeited share or shares to any other person who may be desirous of possessing the same; provided, however, that nothing herein contained shall extend or be construed to prevent the said trustees from bringing and maintaining their action against any shareholder refusing or neglecting to pay as aforesaid, if they shall think fit so to do, instead of pronouncing and declaring his share or shares to be forfeited as aforesaid.

Accounts of Trustees; how to be kept and inspected.

21. And be it enacted, that the trustees shall keep an account, wherein they shall enter all money received and paid by them under and by virtue of the provisions of this Ordinance, which account the auditors, or either of them, may inspect at all reasonable times; and the said account, together with any report of the auditors, or either of them thereon, shall be laid before the shareholders for their inspection at their general annual meetings.

Trustees, how to lodge monies.

22. And be it enacted, that the trustees shall, as soon as they shall receive any sum of money exceeding £10, open and keep an account with any person or persons, not being trustees, who shall be appointed by the shareholders for that purpose at any general meeting, or in any bank; and every other sum of money exceeding £10, so received by the said trustees, shall be forthwith paid into the hands of the person or persons, or bank, so to be appointed by the shareholders for that purpose, to be placed to the credit of such account; and all cheques or orders for payment of any such money thus deposited shall truly express the cause of such payment and the name of the person in whose favor it is drawn, and shall be signed by all the

trustees, or by two of them, for themselves and their co-trustees.

Penalty for improperly retaining monies.

23. And be it enacted, that any trustee who shall retain in his hands, or knowingly permit any co trustee so to retain, any sum of money exceeding £10, part of the church fund, longer than until the first day after his receiving the same, upon which it shall be possible for him to pay the said sum, or cause it to be paid to the person or persons, or bank, appointed as aforesaid, or shall employ for his own benefit, or knowingly permit any co-trustee so to employ any sum of money, part of the church fund, shall and may be removeable by the said shareholders from his said office, and shall moreover forfeit and pay for the benefit of the church fund, double the amount of the fund so retained and employed, and which shall and may be recovered by the other trustees by action in any competent court.

On completion of church, accounts to be wound up and no further calls made.

24. And be it enacted, that as soon as the said church shall be erected and completed as aforesaid, the accounts of the said trustees shall thereupon be finally wound up and audited, and laid before the shareholders for their inspection; and no further call shall be afterwards made upon the shareholders in respect of their shares.

Death, resignation, or removal of trustees.

25 And be it enacted, that in case any trustee shall die, or desire to resign his said office, or shall be removed as aforesaid, the surviving or other trustees shall forthwith call a meeting of the shareholders for the purpose of electing a new trustee in the place of the one dying, or desiring to resign, or being removed as aforesaid, and the same notice shall be given of the time and place of the said meeting, and the same proceedings shall be observed thereat as upon the original election of trustees; provided, however, that no trustee shall be permitted to resign his office until he shall have duly accounted, to the satisfaction of the shareholders, for all sums of money at any time received by him.

Of the Vestry and Churchwardens.

Vestry, when and how formed until loan paid off.

26 And be it enacted, that as soon as the said church shall be erected and completed, the care and government of the said church shall be thenceforward, and until the said loan shall have been wholly paid off in manner hereinbefore provided, together with the interest thereon as aforesaid, committed to a vestry, consisting of the officiating minister for the time being, and the trustees elected by the shareholders, without any new election in manner aforesaid; and the said minister shall, when he is present, preside at the said vestry, and when he is absent then one of

the trustees elected by them; and all the members of the said vestry shall have an equal right of voting in matters belonging to it, except that in case of an equality of votes, the president shall likewise have a casting vote.

Duty of vestry.

27. And be it enacted, that the duty of the said vestry shall be to provide the said church with necessary and customary furniture for the performance of divine worship and the use of the officiating minister therein, and to keep the same clean and in proper repair.

Churchwardens, when and how to be chosen.

28. And be it enacted, that there shall be two churchwardens chosen yearly on the first Wednesday of May, by the vestry from their own number, who shall perform and execute all lawful acts, matters, and things necessary for the good order and decency of behaviour to be kept and observed in the said church by the congregation thereof, and for preserving to all persons their rights in the said pews and sittings.

Of choosing and renting Pews.

Certain pews and free seats to be set apart.

29. And be it enacted, that before any choice of pews by the shareholders shall take place, there shall be set apart and allotted by the vestry a pew, sufficient to hold six persons, for the Minister, and another, sufficient to hold four persons, for the Churchwardens; and there shall also be set apart in some convenient part of the said church the due proportion of free seats for the use of poor persons.

Choice and rent of pew.

30. And be it enacted, that as soon as may be after the erection and completion of the said Church, the trustees shall call together the shareholders of each class according to their number of shares, for the purpose of exercising their right in the choice of pews; and the rents of all such pews as shall be chosen by shareholders shall be fixed by the vestry, according to the number of sittings therein.

Notice to be given of vacant pew.

31. And be it enacted, that after the shareholders shall have chosen their pews in manner provided for that purpose, the trustees shall give notice of all the pews and seats which are then vacant, by affixing the same in writing upon the door of the said Church, and otherwise as they shall see fit; and the said trustees shall give the like notice for six successive weeks at the end of each year, of all the pews which are then vacant, or will become vacant at the commencement of the next year.

For what term pews to be rented.

32 And be it enacted, that all the pews and seats in the said Church, except the pews set apart for the Minister and Churchwardens, and the said free seats, and the pews chosen by shareholders, shall and may be let by the trustees by the year, or for any shorter period, to any person desiring to take the same, at a rent to be affixed to the

same respectively by the vestry, and payable at such times and in such manner as shall be appointed by the trustees; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns, without hindrance or disturbance by any person whatsoever, until the end of the said term; provided he shall continue to pay the rent affixed to the same at the times whereon, and in the manner in which, the same shall be made payable.

Remedy for pew rent in arrear.

33. And be it enacted, that it shall and may be lawful for the trustees, whenever and as often as it shall happen that the rent of any pew is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said trustees to re-enter into the possession of the said pew, for the purpose of this Ordinance, without any other form or proceeding whatever; and no person having been so dispossessed of his pew for non-payment of rent, shall be entitled afterwards to any priority in the choice of a pew; provided, however, that nothing herein contained shall extend or be construed to deprive the trustees from recovering the amount of such rent in arrear by action as aforesaid in any competent court.

Of Burials, Monuments, and Vaults.

No burials within or under the church.

34. And be it enacted, that no burial shall take place within or under the said Church; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial ground consecrated and allotted, or which hereafter may be consecrated and allotted, to the said church for that purpose.

Monuments and vaults, how to be erected or made.

35. And be it enacted, that it shall and may be lawful for the officiating Minister and Churchwardens for the time being, to permit any monuments to be erected or placed in such convenient parts of the said Church, or of the enclosed ground about the same, or in the burial ground belonging thereto, or vaults to be dug and made in the said burial ground, upon the payment to the fund of the said Church for such permission, by the person or persons desiring to erect or place any monument in the said Church or enclosed ground about the same, or in the said burial ground, or to dig and make any vault in the said burial ground, of such a reasonable fee as shall be affixed by the said vestry for such permission according to the terms and extent thereof.

Right of owner of monument or vault,

36. And be it further enacted, that it shall and may be lawful for any person or persons erecting or placing any

monument in the said Church, or enclosed ground about the same, or digging and making any vault in the said burial ground, by and with such permission aforesaid, to have, maintain, and keep up such monument or vault, according to the terms of such permission, to and for the sole and separate use of the said person or persons, and his or their heirs, for ever.

Of the Vestry to be appointed at the termination of the trust.

Office of trustees when to cease, and election of new vestry.

37. And be it enacted, that on the first Wednesday in the month of May next, after the whole of the said loan and the interest thereon shall have been paid off and discharged as aforesaid, the office of the trustees and auditors shall thereupon cease and determine; and in the place of the said trustees there shall be elected on the said first Wednesday in May and yearly afterwards on the same day, by and out of the resident inhabitants of Fort Beaufort, and of the parochial limits thereof, being members of and holding communion with the United Church of England and Ireland as by law established, a like number of persons, who shall, together with the officiating Minister for the time being, form a vestry for the future care and government of the said Church, and two other persons to be auditors of the accounts of the said vestry; and the trustees last in office aforesaid shall, upon the last-mentioned vestry entering upon their said office, surrender and give up to the said last-mentioned vestry all documents, books, plans, papers, and vouchers relating to the said Church and to the administration of the funds thereof, and all sums of money in their custody, possession, or control, arising from and belonging to the Church fund.

Powers and duties of new vestry.

38. And be it enacted, that the said vestry so from time to time constituted and elected by such inhabitant householders as aforesaid, shall and may have and exercise all the same powers, rights, and duties respecting the said church and the care and government thereof, and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same, as shall and may be exercised by the trustees and vestry, or either of them, constituted and elected by such shareholders as aforesaid, under and by virtue of any of the provisions of this Ordinance, in so far as the said powers, rights, and duties shall be applicable to the then existing circumstances of the said Church.

This Ordinance a public Ordinance.

39. And be it enacted, that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be

judicially taken notice of as such by all judges, magistrates, and others, without being specially pleaded.

40. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof. Commencement of this Ordinance.

No. 8,—1845.] ORDINANCE [April 7, 1845.

For removing an objection to the Validity of a certain Jury List.

Whereas, owing to the transference recently made from the Collector of Taxes in Cape Town to the Judge and Superintendent of Police in Cape Town, of the several duties in and by the Ordinance No. 84, of 1831, entituled "an Ordinance for altering and amending the law relative to the qualification of persons liable to serve on Grand and Petit Juries, and to the mode of making out and returning lists of the same," imposed upon and required to be performed by the Collector of Taxes, it was found impossible, for want of sufficient time, to have the copy of the list of Jurors in the 7th section of the said Ordinance No. 84, of 1831, referred to, affixed by the Judge and Superintendent of Police upon the day appointed by the said Ordinance for the affixing of the same, to wit, the first of February; And whereas, however, the said copy of the said list was affixed on the tenth day of this present month of March; And whereas it is necessary that provision should be made for preventing the Jury List, of which a copy was so affixed, from being questioned or impeached upon the ground that the same had been affixed aforesaid after the time limited by law for the affixing of the same:— Preamble.

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the affixing of the said Judge and Superintendent of Police of the copy of the List aforesaid, in the 7th section by the said Ordinance No. 84, of 1831, referred to, upon the tenth day of March in this present year, shall be deemed and taken to be of the same force and effect, in every respect, as if such affixing had been made or taken place upon the first day of February in this present year. The affixing of the Jury List in question on the 10th of March effectual.

2. And whereas, upon the thirty-first day of March in this present year, (being the twenty-first day after the affixing as aforesaid of the copy of the list of Jurors as aforesaid), the Resident Magistrate for Cape Town held

a Court for the purpose of reforming all errors which might have been committed, by omission or otherwise, in preparing the list of which the copy has been so affixed as aforesaid, and which Court purported to be, and to act as, the Court in the 8th section of the said Ordinance No. 84, of 1831, mentioned, and therein directed to be held upon the twenty-first day of February;—And whereas it is necessary that provision should be made for preventing the proceedings of the said Court from being questioned or impeached upon the ground that the said Court was not held at the time limited by law for the holding of the same: Be it therefore enacted, that the Court of the Resident Magistrate, so held as aforesaid, upon the thirty-first day of March in this present year, for the purpose aforesaid, shall be deemed and taken to have been rightfully held, and to have been possessed of all and singular the several powers and authorities touching the reformation of the list aforesaid, and all other matters thereto appertaining, which powers and authorities would have been possessed by a Court duly held for the purpose as aforesaid, to wit, upon the twenty-first day of February; and every thing done or to be done by the said Court, in reference to the said List, shall be deemed, taken, and judged of precisely as if the same had been done by a Court duly held, to wit, upon the said twenty-first day of February:—and all magistrates, officers, and other persons, shall be bound to treat, regard, and act upon the said List when reformed, precisely as if the same had been reformed by means of proceedings had and taken at the several dates and times by the Ordinance No. 84, of 1831 aforesaid, directed and prescribed.

The proceedings of the Court of the Resident Magistrate, held on the 31st March confirmed.

3. And be it enacted, that nothing in this Ordinance contained shall be deemed or taken to alter, affect, or derogate from the force or effect of any of the provisions of the Ordinance aforesaid, No. 84, of 1831, except in regard to the matters hereinbefore mentioned, nor in regard to such lastmentioned matters, except in regard to this present year, to wit, the year of our Lord one thousand eight hundred and forty-five.

Ordinance No. 84, 1831, not altered, except in regard to the affixing and reforming of the said list.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Commencement of this Ordinance.

No. 9,—1845] ORDINANCE [April 15, 1845.

For providing a proper Jury to serve in the Circuit Court for the District of Swellendam.

Preamble.

WHEREAS the certain list of Jurors in the 7th section of the Ordinance No. 84 of 1831, mentioned, was duly affixed, in and for the District of Swellendam, upon the day by law prescribed for the affixing of the same; to wit, the 1st February 1845,—but, by reason of the absence of the Resident Magistrate of the said District from the said District on the 21st of the said Month, the Court in the 8th Section of the said Ordinance mentioned was not holden: Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Resident Magistrate of the District of Swellendam to hold, and he is hereby required to hold, upon the 28th of this present month of April, a Court for the purposes of the said Ordinance No. 84; which Court shall be deemed and taken to have and possess all and singular the powers and authorities by the 8th Section of the said Ordinance conferred upon the Court therein mentioned, and which lastmentioned Court is therein directed to be held upon the 21st day of February, in this present year.

A court to be held on the 28th of April, for the purposes of Ordinance No. 84.

Summonses of Jurors made before the sitting of the said Court to stand good.

2. And whereas it may so happen, that the number of persons by law required to serve on Juries in the Circuit Court to be holden in and for the District of Swellendam, on the 7th day of May next ensuing, will have been summoned from and out of the Jury List so affixed as aforesaid, on the 1st February last past, before the day appointed by this Ordinance for the holding of the Resident Magistrate's Court aforesaid, to wit, the 28th of this present April; And whereas time will not permit that the said persons should be again summoned; or that the other persons should be summoned in their room and stead, after holding of the Court last mentioned: Be it therefore enacted, that every person who shall have been summoned from and out of the persons mentioned in the list aforesaid, in the due and proper time by law prescribed for summoning Jurors, and which person shall, after the holding of the Court aforesaid, for the reforming of the list aforesaid, remain and continue qualified and liable to serve on Juries in the said Circuit Court, shall be deemed and taken to have been duly summoned to serve on Juries in and for the said Circuit Court, and to be qualified and liable to serve therein.

Ordinance No. 84 not to be affected, except as herein provided.

3. And be it enacted, that nothing in this Ordinance contained shall be deemed or taken to alter, affect, or derogate from the force or effect of any of the provisions of the Ordinance aforesaid, No. 84 of 1831, except in regard to the particular Jury List herein before mentioned, and which was affixed as aforesaid on the said 1st February 1845.

Commencement of this Ordinance.

4. And be it enacted, that this Ordinance shall commence and take effect from the date of the promulgation thereof.

No. 10,—1845.] ORDINANCE [May 14, 1845.

For Punishing the Concealment of the Birth of Children.

Preamble.

WHEREAS the concealment by mothers of the birth of their children is a highly suspicious and reprehensible proceeding; And whereas such concealment is not, by the law of this colony, deemed to be a crime; And whereas it is expedient that such concealment should be constituted and declared to be a crime: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such woman, so offending, shall be deemed to be guilty of the crime of concealing the birth of her child, and being convicted thereof shall be liable to be imprisoned, with or without hard labour, for any term not exceeding five years.

Crime of concealing the birth of a child defined.

Punished.

When child died not necessary to be proved.

2. And be it enacted, that, upon the occasion of the trial of any person charged with the commission of the said crime, it shall not be necessary to prove whether the child died before, at, or after its birth.

Upon indictment for murder, prisoner may be found guilty of concealing the birth.

3. And be it enacted, that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the Jury, by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof (but it shall not be necessary to prove whether the said child died before, at, or or after its birth). And thereupon it shall and may be lawful for the Court to pass upon her any such sentence as might have been lawfully passed upon her, if she had been convicted upon an indictment for the crime of concealing the birth of her child.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof. Date of the commencement of this Ordinance.

No. 11,—1845.] ORDINANCE [May 14, 1845.

For repealing the 1st Section of Ordinance No. 4, of 1843.

WHEREAS a certain Ordinance was made and passed in this Colony, bearing date the 4th day of May, 1843, and numbered 4, 1843, entituled "An Ordinance for establishing the validity of certain Writings, Testamentary and Powers of Attorney, executed without being witnessed as by law required, and for other purposes;" And whereas it is expedient to repeal the first section of the said Ordinance:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the first section of the said Ordinance shall be repealed, and the same is hereby repealed accordingly. First section of Ordinance No. 4, 1843, repealed.

2. And be it enacted, that the repeal aforesaid of the said first section of the said Ordinance shall not be deemed or taken to impair the validity of the second or other remaining sections of the said Ordinance, or to render them, or any of them, or the said Ordinance generally, insensible or imperfect; but on the contrary, the said second and remaining sections shall hereafter be read, taken, and construed, and be of the same force and effect, precisely as if the said first section still remained unrepealed. The repeal aforesaid not to be deemed to make the said Ordinance imperfect.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof. Date of the commencement of this Ordinance.

No. 12,—1845.] ORDINANCE [Aug. 27, 1845.

For establishing the Roman Dutch Law in and for the District of Natal.

WHEREAS it has pleased Her Majesty the Queen, by certain Letters Patent, bearing date the 31st day of May, in the Seventh Year of Her Reign, to annex to this Settlement of the Cape of Good Hope, as a part or portion thereof, the District of Natal in South Africa; And whereas, by the said Letters Patent, it is amongst other things provided, that no law, custom, or usage in force within this Settlement should, by virtue merely of the said Letters Patent, extend to, or become in force, within the said District of Preamble.

Natal; but that it should be competent for the Legislature of this Settlement, subject to the limitations, conditions, and provisions in the said Letters Patent mentioned or referred to, to make, ordain, and establish all such Laws and Ordinances as to them should seem meet for the peace, order, and good government of the said District of Natal; And whereas His Excellency the Governor has declared, by a Proclamation dated 21st August 1845, by him issued in virtue of certain authority in that behalf in him vested, the limits or boundaries of the said District of Natal, and has defined the Territory or Territories which constitute the said District: And whereas it is expedient, without awaiting the legislative establishment within the said District, of the Court or Courts for the administration of Justice, which is, or are, now about to be created, to make provision for the establishment of such Laws as are immediately and indispensably required for the preservation, in the meantime, of peace and good order, and the repression of violence, injury, and injustice amongst all persons resident in the said District: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the system, code, or body of law commonly called the Roman Dutch Law, as the same has been and is accepted and administered by the legal tribunals of the Colony of the Cape of Good Hope, shall be, and the same is hereby, established as the law, for the time being, of the District of Natal (as the said District shall, from time to time, be limited and defined by or on behalf of Her Majesty the Queen), and of Her Majesty's Subjects, and all others residing and being within the said District: Provided, however, that nothing herein contained shall be deemed, or taken, to establish within the said District any Law or Ordinance heretofore at any time made or passed in this colony, by or through the Local Government or Legislature thereof, or to give any existing Court or Magistrate of the said Colony any authority or jurisdiction over or in regard to the said District, or to prevent the said system, code, or body of law from being hereafter added to, or altered, in regard to the said District, by any competent authority.

Raman Dutch law established for the time being.

2. And be it enacted, that it shall and may be lawful for the Governor aforesaid to address to any one or more of Her Majesty's Subjects residing within the said District one or more commission or commissions, authorising him or them to exercise within such District the office of a Magistrate, for the purpose of preventing the perpetration therein of any crimes and offences punishable by law, and

Governor has power to appoint Magistrates.

for the purpose of arresting and committing to custody for trial before the certain court or courts now about to be established within the said district any person or persons charged, on sufficient evidence, with the commission of any crimes or offences within the said district, which shall have been committed after the date of the publication of this Ordinance in the *Government Gazette*, as hereinafter mentioned: Provided always, that every such commission shall be revocable at pleasure; and provided also, that any person committed for trial by any such magistrate, who shall not be brought to trial within six months from the date of his commitment, shall, at the expiration of such term of six months, be discharged from custody, upon entering into his own recognizance, conditioned in such sum as shall appear just and reasonable, to appear before any such court or courts as aforesaid, when duly summoned so to do, there to answer to any such charge as may be preferred against him.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof, by publication thereof in the *Government Gazette*.

Ordinance to take effect from date of promulgation.

No. 13,—1845.] ORDINANCE [Oct. 7, 1845.

For applying a sum not exceeding £161,527 : 13 : 5, *for the Service of the year* 1846.

WHEREAS the Expenditure required for the service of the Government of this Colony for the year 1846 has been estimated at the sum of One Hundred and Sixty-One Thousand, Five Hundred and Twenty-seven Pounds, Thirteen Shillings, and Five Pence:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that a sum not exceeding One Hundred and Sixty-one Thousand, Five Hundred and Twenty-seven Pounds, Thirteen Shillings, and Five Pence be charged upon the Revenue of the said Colony, for the service of the year 1846, and applied in the manner following, that is to say:—

For the Expenditure of the Civil Establishment,—a sum not exceeding Fifty-one Thousand Two Hundred and Forty-one Pounds, Eleven Shillings, and Eleven Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 1.

For the Expenditure of the Ecclesiastical and School Establishments,—a sum not exceeding Eighteen Thousand

Three Hundred, and Eight Pounds, Fourteen Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No 2.

For the Expenditure of the Medical Establishment,—a sum not exceeding Five Thousand Seven Hundred and Forty-nine Pounds, Eighteen Shillings, and Ten Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 3.

For the Expenditure of the Judicial and Law Establishment,—a sum not exceeding Twenty-five Thousand Four Hundred and Thirty Pounds, and Eleven Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 4.

For the Expenditure on Account of Police, Prisoners, and Gaols,—a sum not exceeding Fourteen Thousand One Hundred and Fourteen Pounds, Nineteen Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No 5.

For the Expenditure of the Road Department,—a sum not exceeding Twenty-two Thousand Pounds, in the manner set forth in the Schedule hereunto annexed, marked No. 6.

For the Expenditure on Account of Aboriginal Native Tribes,—a sum not exceeding Three Thousand Four Hundred and Sixty five Pounds, and Nineteen Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 7.

For the Expenditure on Account of Pensions and Retired Allowances,—a sum not exceeding Twelve Thousand and Ninety Pounds, and Eight Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 8

For the Expenditure on Account of Miscellaneous Services,—a sum not exceeding Nine Thousand, One Hundred, and Twenty-five Pounds, and Eighteen Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 9.

No. 14,—1845.] ORDINANCE. [Oct. 16, 1845.

For erecting a District Court in and for the District of Natal.

Court created.

WHEREAS, in order to the due administration of justice in the district of Natal, it is expedient that a district court of justice should be therein erected: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof,

that there shall be erected, created, and constituted, and there is hereby erected, created, and constituted, within the said district of Natal, a certain court, to be called and known as "the District Court of Natal."

Court of Record.

2. And be it enacted, that the said court shall be, and the same is hereby, created and constituted a court of record.

To consist of one Judge styled Recorder, to be nominated by the Queen.

3. And be it enacted, that the said court shall consist of, and be holden by and before, one judge, to be called and known by the style and title of the Recorder of the district of Natal, and which said Recorder shall, from time to time, be nominated and appointed by her Majesty the Queen, her heirs and successors, in such manner and form as her said Majesty shall deem most fitting, and which said Recorder shall be a barrister in England or Ireland, or an advocate of the court of session in Scotland, or an advocate of the supreme court of the colony of the Cape of Good Hope.

Pending the Queen's nomination, Recorder to be nominated by Governor.

4. And be it enacted, that until her said Majesty shall have nominated and appointed some person to fill the said office of Recorder of the district of Natal, and the person so appointed shall be within the limits of the said district, it shall and may be lawful for the Governor of the colony of the Cape of Good Hope, for the time being, by letters patent to be by him for that purpose made and issued, under the public seal of the said colony, to nominate and appoint some fit and proper person to be and act as such recorder as aforesaid of the district of Natal.

Recorder, before acting as such, to take certain oaths.

5. And be it enacted, that every such recorder shall, before acting as such, take and subscribe before the lieutenant-governor of the district of Natal (who is hereby authorized to administer the same) the like oaths, *mutatis mutandis*, as the chief justice of the colony of the Cape of Good Hope is or shall be, by law or usage, required to take and subscribe.

In case of Recorder's death, &c., Lt.-Governor to appoint some fit person to act.

6. And be it enacted, that upon the death, resignation, sickness, or incapacity of the said recorder, or in case of his absence from the said district, or in case of any suspension from office of the said recorder as is hereinafter mentioned, it shall and may be lawful to and for the lieutenant-governor of the said district, by a commission under the public seal of the said district, if such there be, or otherwise under his hand and seal, to nominate and appoint some fit and proper person (whether such barrister or advocate as hereinbefore in the third section of this ordinance mentioned or not, to act in the place and stead of the recorder so dying or resigning or labouring under

such sickness or incapacity as aforesaid, or being so absent or suspended as aforesaid, until the vacancy so created shall be supplied by a new appointment to be made in manner aforesaid by Her Majesty the Queen, her heirs and successors, or until the recorder so becoming sick, or incapable, or being absent, or suspended as aforesaid, shall resume his office and enter into the discharge of the duties thereof. Provided also, that if the person first nominated and appointed as aforesaid to act in the place and stead of such recorder, shall not be such barrister or advocate as aforesaid, then and in that case it shall and may be lawful for the lieutenant-governor aforesaid, should he so think fit, to nominate and appoint, in manner aforesaid, some other fit and proper person, being such barrister or advocate as aforesaid, to act, as aforesaid, in the place and stead of such recorder, and such second or new appointment shall *ipso facto* be, and be deemed and taken to be, a revocation and cancellation of the first or original appointment.

How Recorder to hold or be suspended from Office.

7. And be it enacted that the said recorder shall hold his office during his good behaviour; provided, nevertheless, that it shall and may be lawful for the lieutenant-governor of the said district, by any order to be by him for that purpose made and issued under the public seal of the said district, if such there be, or otherwise under his hand and seal, with the advice of the executive council of government of the said district (as such executive council shall be constituted according to instructions to be issued to and for the said lieutenant-governor by Her Majesty the Queen, her heirs and successors, or failing such, by instructions to be issued to and for the said lieutenant-governor, by the Governer of the colony of the Cape of Good Hope,) or with the advice of the major part in number of the said council, upon proof of the misconduct of such recorder, to suspend him from his office and from the discharge of the duties thereof: Provided, that in every such case the said lieutenant-governor shall forthwith report to the governor aforesaid, for immediate transmission to her said Majesty, through one of her principal secretaries of state, the grounds and reasons of such suspension.

Suspension to be confirmed or disallowed by the Queen.

8. And be it declared and enacted, that there shall be and there is hereby reserved to her said Majesty, her heirs and successors, full power and authority to confirm and disallow any such suspension from office as aforesaid, as well as full power and authority, upon sufficient proof to her or their satisfaction of any misconduct committed by any such recorder, to remove and displace him from his office.

Rank of Recorder.

9. And be it enacted, that the said recorder shall, within the said district, have rank and precedence above and before all her Majesty's subjects whomsoever within the said district, excepting the Governor or lieutenant-governor of the colony of the Cape of Good Hope, and the lieutenant-governor of the said district, and the commander-in-chief of her Majesty's forces, within the said colony of the Cape of Good Hope for the time being, and excepting all such persons as by law or usage in England take place there before the lord chief justice of the court of Queen's bench.

Seal of Court.

10. And be it enacted, that the district court of the district of Natal shall have, and use as occasion may require, a Seal bearing a device and impression of the royal arms, with an exergue or label surrounding the same within this inscription "*the Seal of the District Court of Natal.*"

Seal to be kept by Recorder.

11. And be it enacted that the said seal shall be delivered to, and kept in custody of, the recorder of the said district for the time being, or the person for the time being acting as such.

Recorder's salary.

12. And be it enacted, that every recorder of the said district, so long as he shall hold his office shall be entitled to have and receive, from and out of her Majesty's revenues within the said district, such salaries as shall, from time to time, be granted to him by her Majesty, her heirs and successors, which salary shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever, and that none such shall, on any account or pretence whatever, be accepted, received or taken by any such recorder.

Salary to cease if Recorder accepts other place of emolument.

13. And be it enacted, that no such recorder as aforesaid shall accept, take, or act in any other office, or place of profit or emolument, within the said district, and that the acceptance or receipt of any such other office or place by any such recorder shall actually vacate and avoid his office, and the salary thereof shall cease, accordingly, from the time of the acceptance or receipt of such other office or place.

Officers of Court how to be appointed.

14. And be it enacted, that there shall be attached and belong to the said district court such officers necessary for the administration of justice, as the lieutenant-governor of the said district shall, from time to time approve of; and that the person or persons to be appointed to fill any office or offices of which the duties shall correspond to those performed by the sheriff, registrar, or master of the supreme court of the colony of the Cape of Good Hope shall be so appointed by her Majesty the Queen, her heirs and successors, and shall, pending such appointment, be

appointed by the lieutenant-governor of the said district; and that all persons appointed to any other office within the said district court shall be so appointed by the said lieutenant-governor; and all officers of or in the said court, other than the recorder aforesaid, shall hold office during the pleasure of her Majesty the Queen, her heirs and successors.

Advocates and Attornies, how admitted.

15. And be it enacted, that the said district court shall be, and it is hereby, authorized and empowered to approve, admit, and enrol as advocates and attornies as therein, such persons as shall have been admitted, or shall, by law, be admissable, to practise as such advocates or attornies respectively, in the supreme court of the colony of the Cape of Good Hope, or in the circuit court of the said colony, which persons, when approved, admitted, and enrolled as aforesaid, shall be and are hereby authorized to appear, and plead, and act for the suitors in the said district court, subject always to be removed by the said lastmentioned court from their station therein, upon reasonable cause. Provided always, that every person who shall be appointed to be, or act as, crown prosecutor for the district of Natal, shall, while he shall hold such appointment, be admitted to act as an advocate in the said court, in which he shall prosecute or appear for her Majesty the Queen, and shall, in all other cases be admitted to act as an attorney in the said court.

Advocates and Attornies how admitted.

16. And be it enacted, that it shall and may be lawful for the said district court, in case, and so long as, there shall not be, within the said district seven advocates or attornies, or seven advocates and attornies approved, admitted, and enrolled under and by virtue of the provisions in the last preceding section mentioned, to approve, admit, and enrol as attornies of and in the said court, such a number of persons of good fame and credit within the said district as shall be best qualified to act as such attornies, and be desirous of being so approved, admitted, and enrolled. Provided always, that all persons so approved, admitted, and enrolled shall be subject to removal by the said court upon any reasonable cause; and that no person having been once approved, admitted, and enrolled, shall be deemed to have become incapable of acting in the said court by reason that seven or any greater number of such advocates or attornies as are in the 15th section of this ordinance mentioned shall have afterwards been approved, admitted, and enrolled by the said court.

Advocates and Attornies to take certain oaths.

17. And be it enacted, that every person to be approved, admitted, and enrolled as an advocate or attorney of the said district court shall take and subscribe the like oaths,

mutatis mutandis, as would or should in the like case be be taken and subscribed in the supreme court of the colony of the Cape of Good Hope.

Persons not enrolled not to appear or to plead.

18. And be it enacted, that no person or persons whatsoever, not approved, admitted, and enrolled as aforesaid, shall be allowed to appear, plead, or act in the said district court for or on behalf of any of the suitors in the said court.

When advocates may act as attornies, and *vice versa*.

19. And be it enacted, that advocates shall be admitted to act as attornies in the said court, and attornies be admitted to act as advocates in the said court, in the like cases, and no other, as those in which, by the rules and orders of or for the circuit courts of the colony of the Cape of Good Hope, advocates may appear and act for attornies, and, *vice versa*, attornies may appear and act for advocates.

Jurisdiction of Court.

20. And be it enacted, that the district court of the district of Natal shall have cognizance of all pleas, and jurisdiction in all causes, whether civil, criminal, or mixed, arising within the said district of Natal, with jurisdiction over her Majesty's subjects and all other persons whomsoever residing and being within the said district of Natal, in as full and ample a manner, and to all intents and purposes, as the supreme court of the colony of the Cape of Good Hope now hath, or can lawfully exercise, the same, under and by virtue of the royal charter of justice of his late Majesty King William the Fourth, within all other parts of the said colony, except the said district of Natal.

Laws according to which Court is to judge.

21. And be it enacted, that the district court aforesaid shall apply, judge, and determine upon and according to such laws as are now in force within the said district, and all such other laws as shall at any time hereafter be made and established for the peace, order, and government thereof by her Majesty the Queen, her heirs and successors, with the advice and consent of parliament, or by her or them in her or their privy council, or by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof.

Mode of pleading and proceeding in District Court.

22. And be it enacted, that in the exercise of such jurisdiction, powers, and authorities as aforesaid, the pleadings and proceedings of the said District Court shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared in open Court, and not otherwise; and that the several pleadings and proceedings of the said court shall be in the English language, and that in all criminal cases the witnesses against and for any accused person or persons shall deliver their evidence *viva voce*, and in open court.

In criminal cases, trial to be before Recorder and Jury of nine men.

23. And be it enacted, that in any criminal case depending before the said district court, the trial of the person or persons accused shall be before the recorder of the said district and a jury of nine men, who shall concur in every verdict to be given on the trial of any such accused party or parties: and every such verdict shall be delivered in open court by the mouth of the foreman of every such jury, and shall be, thereupon, recorded and read over to such jury before they are discharged from attendance on the said court. Provided, nevertheless, and it is hereby further enacted, that no person within the said district, who shall be otherwise competent, according to certain laws and ordinances to be hereafter enacted in that behalf, to serve on any such jury as aforesaid, shall be, or be taken to be, incompetent to serve on such jury, by reason of his ignorance or supposed ignorance of the English language.

Chief seat of court at Pietermaritzburg.

24. And be it enacted, that the said district court shall (but subject, however, to the provisions in the two next succeeding sections contained) be held at Pietermaritzburg in the said district, which shall be the chief seat of the said court, and the place where the records thereof shall be deposited for safe custody, and for the inspection of all whom it may concern.

Lt. Governor to divide district into divisions.

25. And be it enacted, that it shall and may be lawful for the lieutenant-governor of the said district, and he is hereby required, by any proclamation or proclamations to be by him for that purpose issued, and posted upon, or affixed to, any public place in Pietermaritzburg aforesaid, and otherwise published for the information of the inhabitants of the said district, as opportunity may offer, to apportion or divide the said district into two or more divisions, and to fix and ascertain the boundaries or limits of every such division, and such bondaries and limits from time to time to alter, as occasion may require. Provided always, that such apportionment of the said district into such divisions as aforesaid, be made in such manner as to the said lieutenant-governor may appear to be best adapted for enabling the inhabitants of the said district to resort with ease and convenience to the district court aforesaid, when held, from time to time, in the said divisions as hereinafter mentioned.

Court to be holden twice in each year in each division.

26. And be it enacted, that the district court aforesaid shall be holden by the recorder aforesaid, twice at the least in each year in each of the divisions into which the said district may be so divided as aforesaid, at such times, and at such place within each of the said divisions, as the said lieutenant governor shall appoint, and, by any procla-

mation or proclamations to be by him issued and published as in the last preceding section mentioned, announce for general information ;—and all actions and suits which shall be brought in the said district court shall be heard and determined in whichever of the divisions aforesaid shall, to the said court appear to be most convenient for,that purpose.

In criminal cases, Lt. Governor to approve of all sentences of death, transportation, or banishment.

27. And be it enacted, that no judgment or sentence of the district court aforesaid, in any criminal case whereby any person shall be condemned to death or transportation, or banishment from the said district, shall be carried into execution until a report of all the proceedings upon any such trial shall have been laid before, or transmitted to, the lieutenant-governor of the said district, by the said recorder, nor until the said lieutenant-governor shall have authorised, and approved, the execution of such sentence.

After verdict of guilty in criminal cases, case may be removed to the supreme court for determination of matter of law.

28. And be it enacted, that it shall and may be lawful for the district court aforesaid, in any criminal case pending in or before the said court, after a verdict of guilty shall have been recorded, to abstain, should the said court see cause, from then passing sentence upon the person convicted, and to order and direct that such case be removed from the said district court to the supreme court of the colony of the Cape of Good Hope, for the decision, or determination, of any points or questions of law arising in such case ; and upon such removal being certified by the recorder of the said district to the said supreme court, together with the points or questions by reason or in respect of which such removal has been ordered, the said last-mentioned court shall proceed to adjudge, decide, or determine the said points or questions, and shall then remit the case with its judgment, decision, or determination, to the said circuit court, which said court shall conform, and give effect to the same ; provided always that it shall not be necessary, in such case as aforesaid, for the person so convicted as aforesaid, to be present in the said supreme court at the argument, decision, or determination of, or judgment upon, any such points or questions as aforesaid ; —and provided also, that the said district court shall, pending such decision, determination, or judgment, commit the person so convicted to prison, or otherwise admit him to bail, as may, by any law or ordinance, be hereafter specially provided in that behalf; and if it shall happen that there be no such law or ordinance, then the said court shall either commit such person to prison or admit him to bail as may be most consistent with the ends of justice, reference being had to the nature of the charge, to the circumstances of the case, and to the ordinary law of the district touching bail in criminal cases.

Court may frame rules, orders, &c.

29. And be it enacted and declared, that it shall and may be lawful for the said district court, by any rules or orders of court, to be from time to time for that purpose made and published, to frame, constitute, and establish such rules, orders, and regulations as to it shall seem meet, touching and concerning the time and place of holding the said district court at Pietermaritzburg aforesaid; and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal, indictments and informations, to be therein brought; and the appointing of commissioners to take bail and examine witnesses; and the examination of witnesses *de bene esse*, and allowing the same as evidence; and the proceedings of all ministerial officers of the said court; and the process of the said court, and the mode of executing the same; and the summoning, empanelling, and challenging of jurors; and the admission of advocates and attornies; and the fees, poundage, or perquisites, to be lawfully demanded by, and payable to, the officers and attornies of the said court, and generally touching and concerning all other matters and things necessary for the proper conduct and despatch of business in the said district court; and all such rules, orders, and regulations, from time to time, to revoke, alter, amend, or review, as occasion may require; provided always, that no such rule, order, or regulation shall be repugnant to this ordinance, and that the same shall be so framed as to promote, as far as may be, economy and expedition in the despatch of the business of the said court; and that all such rules, orders, and regulations shall, so far as the circumstances will permit, be framed in reference to, and conformity with, the corresponding rules, orders, and regulations in use in the supreme court of the colony of the Cape of Good Hope,—and that the same, or a copy of the same, written or printed, shall be deposited by the said recorder, in some convenient place or office, of or belonging to the said court at Pietermaritzburg, and be at all times kept and preserved there for general information; and that such rules, orders, and regulations as aforesaid, shall be further promulgated in whatever manner the said court shall find practicable and deem expedient: Provided always, that the said recorder shall forthwith deliver, or cause to be delivered, to the lieutenant-governor of the said district, a copy, duly authenticated, of every such rule, order, and regulation, which said lieutenant governor shall forward the same to the governor of the colony of the Cape of Good Hope without delay, in order that it may be immediately transmitted to Her Majesty the Queen, her heirs and successors, through one

of her or their principal secretaries of state, for her or their approbation or disallowance.

Appeal to the supreme court—in what cases and under what regulations.

30. And be it enacted, that it shall and may be lawful for any person or persons, being a party or parties to any civil suit, action, or proceeding, depending in the said district court, to appeal to the supreme court of the colony of the Cape of Good Hope, against any final judgment, decree, or sentence of the said court; or against any rule or order made in any civil suit or action, having the effect of a final or definitive sentence.

For the purpose of appeal to supreme court, district court to be deemed a circuit court, but sentence, &c., appealed from may be executed notwithstanding appeal, should the district court so direct.

31. And be it enacted, that for the purpose of, and in relation to, every such appeal as last aforesaid, the said district court of the district of Natal shall be considered as, and deemed and taken to be, a circuit court of the colony of the Cape of Good Hope, and that all and singular the provisions of the 41st, 42nd, and 43rd sections of the royal charter of His late Majesty King William the Fourth, for the better and more effectual administration of justice in this colony of the Cape of Good Hope, shall apply to, and regulate the proceedings of the said district and supreme courts, respectively, precisely as if the said sections were herein again set forth, and word for word repeated. Provided always, that if in any case it shall be made to appear to the said district court, that a stay of execution, pending any such appeal as aforesaid, would be likely to defeat or injure the ends of real and substantial justice, it shall be lawful for such district court, and it is hereby empowered, to direct that the sentence, judgment, decree, or order appealed from, shall, notwithstanding such appeal, be carried into execution, and in every such case, the person in whose favor the said sentence, judgment, decree, or order shall be given, shall, before the execution thereof, enter into good and sufficient security, to be approved by the said district court, for the restitution of the money, matter, or thing, levied, taken, or received from the party appellant in respect of such execution, together with his reasonable costs and charges.

Judgment of supreme court on appeal from district court, subject to the provisions of sec. 50, of the royal charter of justice.

32. And be it enacted, that the judgment, decree, sentence, rule, or order made by the said supreme court in cases so, as aforesaid, brought in appeal before it, from the said district court, shall be subject to the provisions of the 50th section of the charter of justice aforesaid.

Supreme court may remit to district court cases brought in appeal.

33. And be it enacted, that it shall and may be lawful for the said supreme court, should it see fit in any such case aforesaid, brought in appeal as aforesaid, to remit such case to the district court aforesaid, with such rule or order touching the further proceedings therein, as the said supreme court shall consider necessary; and that the said

district court shall, in all cases of appeal to the said supreme court, conform to and execute such judgments and orders as the said supreme court shall see fit to make in such manner as any original judgment, decree, order, or rule, by or of the said district court, could or might have been executed.

Supreme and district courts to have a reciprocal right of removing suits.

34. And be it enacted, that as often as any suit or action shall be brought in the supreme court, or in the district court aforesaid respectively, and it shall be made to appear to the court before which such suit or action may be pending, that the same may be more conveniently heard or determined in the other of the said courts, it shall be lawful for the court before which such suit or action is pending, to order the same to be removed to such other court, and such order shall be certified by the court granting the same to the court into which the suit or action shall be intended to be removed; and thereupon, it shall be lawful for such last-mentioned court, and it is hereby required, to proceed in such suit or action in like manner as if the same had been originally commenced and prosecuted in such last-mentioned court.

Supreme and district courts respectively to execute, under certain circumstances, the judgments of each other.

35. And be it enacted, that when and as often as any judgment, decree, or order for the payment of money shall be made by the supreme court aforesaid, or by any circuit court of the colony of the Cape of Good Hope, in respect of, or in relation to, any civil suit, action, or proceeding in which the party defendant shall have been personally served with the process of such court, or shall have appeared, in pursuance thereof, it shall be lawful for the district court aforesaid, and it is hereby required, upon inspection of such judgment, decree, or order, and upon proof to be made by the return of the sheriff, or officer acting as such, or performing the duties thereof, to the process of execution of such supreme or circuit court sued out in that behalf, that the said judgment, decree, or order shall remain either wholly or in part unsatisfied, to issue process of execution upon such judgment, decree, or order, against any property, moveable or immoveable, within the jurisdiction of the said district court, belonging to the party against whom such judgment, decree, or order shall have been obtained, and to cause such process to be executed in such manner as process could or might have been issued and executed upon any original judgment, decree, or order of the like nature of the said district court; and in like manner the said supreme court shall, and it is hereby required to execute, or cause to be executed, under the like circumstances, limitations, and conditions in every respect, any judgment, decree, or order of the said district

court for the payment of money, precisely as if, *mutatis mutandis*, the former provisions of this section were again set forth at large, and word for word repeated. Provided always, that it shall not be necessary to prove the handwriting of the sheriff to any such return as aforesaid.

How records of each of the said courts respectively to be proveable in the other of them.

36. And be it enacted, that in every case in which any judgment, decree, order, or other record of the supreme court aforesaid, or any circuit court aforesaid, shall require to be proved, inspected, or in any manner referred to in the said district court, and, *vice versa*, in every case in which any record of the said district court shall require to be proved, inspected, or in any manner referred to in the said supreme or in any circuit court, a copy of such record, certified under the seals of the said supreme court, and of the said district court respectively, or, as to any such record of any circuit court, under the signature of the registrar of such court, shall be taken and received as *prima facie* evidence of such record; provided always, that it shall not be necessary, in regard to any such certified copy, to prove the handwriting of any such registrar thereto.

Lt.-Governor to notify time and place of the opening of the district court.

37. And be it enacted, that the lieutenant-governor of the district of Natal shall, by proclamation to be by him issued and published in manner and form as the certain other proclamations hereinbefore mentioned, notify to the inhabitants of the said district the time and place when and where the said district court hereby established will be opened.

Interpretation of terms.

38. And be it enacted, that in the interpretation of this ordinance the terms "Governor of the Cape of Good Hope and "Lieutenant Governor of the district of Natal" shall, respectively, extend to and embrace the officers for the time being administering the government of the said colony and the said district, respectively; and that the term "Recorder" shall extend to and embrace the person for the time being acting as such; and that the singular number shall include several persons as well as one person; and that the masculine gender shall include females as well as males.

Ordinance when to commence.

39. And be it enacted, that this ordinance shall commence and take effect from and after the promulgation thereof in the *Government Gazette*.

No. 15,—1845.] ORDINANCE [Dec. 1, 1845.

For repealing Ordinances No. 4, 1843, and No. 11, 1845, and for making other Provisions in their stead.

Preamble.

WHEREAS a certain Ordinance was made and passed in this Colony, bearing date the 4th day of May 1843, and numbered 4, 1843, entituled, "Ordinance for establishing the validity of certain Writings Testamentary and Powers of Attorney, executed without being witnessed as by law required, and for other purposes:" And whereas a certain other Ordinance was made and passed in this Colony, bearing date the 14th day of May 1845, and numbered 11, 1845, entituled, "Ordinance for repealing the first section of Ordinance No. 4, 1843:" And whereas it is expedient to repeal both of the said Ordinances, and to make other provisions in their room and stead :—

Ordinances Nos. 4, 1843, and 11, 1845, repealed.

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the two certain ordinances aforesaid shall be repealed, and the same are hereby repealed accordingly.

Laws and usages as to wills, &c. repealed, as regards wills, &c. made after 1843.

2. And be it enacted, that every law and usage in force within this colony before and down to the first day of January 1844, by reason whereof any wills or other testamentary writings, or any powers of attorney, were or might have been deemed, or taken to be, inoperative or defective, unless the execution of the same were duly witnessed by seven, or some other number of, competent witnesses, shall be and the same are hereby declared to be repealed, in regard to all wills or other testamentary writings, or powers of attorney, made or executed upon or after the said 1st day of January 1844.

How such last-mentioned wills, &c. shall be signed and attested.

3. And be it enacted, that no will or other testamentary writing, and no power of attorney, made or executed upon or after the said 1st day of January 1844, which will or other testamentary writing, or power of attorney, if made before the said 1st day of January 1844, would, in order to be valid, have required to be witnessed by seven or some other number of competent witnesses, shall be valid, unless it shall be, or shall have been, executed in the manner hereinafter mentioned:—that is to say it shall be, or shall have been, signed at the foot or end thereof, if a will or other testamentary writing, by the testator, or by some other person in his presence and by his direction, and if a power of attorney, by the person executing the same, or by some other in his presence and by his direction; and such signature shall be or shall have been made or acknowledged by the testator or person

executing the power of attorney, as the case may be, in the presence of two or more competent witnesses, present at the same time; and such witnesses shall attest and subscribe, or shall have attested and subscribed the will or power of attorney, as the case may be, in the presence of the person executing the same; and where the instrument shall be, or shall have been, written upon more leaves than one, the party executing the same, and also the witnesses, shall sign or shall have signed their names upon at least one side of every leaf upon which the instrument shall be, or shall have been, written.

Wills on more leaves than one, must be signed on each leaf.

4. And be it enacted, that nothing in this Ordinance contained shall be deemed or taken to extend to, or affect, any will or other testamentary writing, or power of attorney, made or passed, or to be made or passed, before any notary and witnesses, or any codicil made by virtue, or in pursuance of, any power reserved in that behalf in any such last-mentioned will or testamentary writing, nor in any instrument whatever, testamentary or otherwise, made and executed at any time before the said 1st day of January 1844.

Ordinance not to extend to notarial instruments or instruments executed before Jan 1, 1844.

5. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Ordinance when to commence.

No. 16,—1845.] ORDINANCE [Dec. 1, 1845.

To amend the Ordinance No. 7, 1843, entituled "Ordinance for repealing the Church Regulations of the 25th July 1804, and enacting others in their room and stead."

Whereas by the 5 h section of the Ordinance No. 7, 1843, entitul d "Ordinance for repealing the Church Regulations of the 25th July 1804, and enacting others in their room and stead,"—it is provided that the governor of this colony for the time being should have the right of filling up vacancies in the Office of minister in congregations belonging to the Dutch Reformed Church in South Africa of which congregations the minister for the time being receives a salary from the colonial government: And whereas it is expedient that the said right should be vested in Her Most Gracious Majesty the Queen, her heirs, and successors:—Be it therefore enacted by the governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the 5th section of the said Ordinance shall be repealed, and the same is hereby repealed accordingly.

Preamble.

Sec. 5, Ordinance 7, 1843, repealed.

Queen to appoint Minister of Dutch Reformed Church when salaried by government.

2. And be it enacted, that in every case in which a vacancy shall occur in the office of minister of any congregation belonging to the said Dutch Reformed Church, of which congregation the minister for the time being receives a salary from the colonial government, Her Majesty the Queen, her heirs, and successors shall have and possess, and shall exercise, in whatever manner she or they shall deem the best for the vacant congregation, the sole and unrestricted right of filling up such vacancy by the appointment of whatever individual she or they may select from amongst the number of such ministers as shall, by the rules and regulations of the said Church for the time being, be competent to be appointed to supply vacancies in the ministry thereof.

Ordinance when to commence.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 17,—1845.] ORDINANCE [December 4, 1845.

For Determining the Qualification of Jurors in the District of Natal.

Preamble.

WHEREAS it is necessary to determine the Law relative to the qualifications of Jurors liable to serve on Juries in the District of Natal, and to the mode of making out and returning lists of such persons; Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that every man resident within the said district, except as hereinafter excepted, between the age of twenty-one years and sixty years, who shall possess the qualifications hereinafter provided, shall be qualified and liable to serve as a juror in the District Court of Natal.

Qualification as to age.

Officers, &c. exempted from acting as jurors.

2. And be it enacted, that the recorder of the said district, all clergymen in holy orders, all persons who teach or preach in any congregation assembled for religious worship, all advocates and attornies duly admitted by the district court, and actually practising, all officers of any courts of superior or inferior jurisdiction, exercising the duties of their respective offices, all gaolers and keepers of houses of correction, all persons actually practising as physicians, surgeons, surgeon-apothecaries, apothecaries, or accoucheurs, all officers in Her Majesty's army or navy, on full pay or in active employment, all persons employed in the civil service of Her Majesty's government in the said district, and all persons being, or acting as, or discharging the same or similar duties to, field-commandants

field cornets, sheriffs' officers, constables, and church clerks, except as hereinafter excepted, shall be, and are hereby, absolutely freed and exempted from being returned as jurors, and from serving upon any jury whatsoever, and shall not be inserted in the lists to be prepared by virtue of this Ordinance, as hereinafter mentioned:—Provided also, that no man who has been or shall be convicted of any treason, or any other crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry or excommunication, shall serve on juries, on any account or on any occasion whatsoever. Disqualification.

3. And be it enacted, that every man qualified and liable, in the manner hereinbefore provided, to serve as a juror, who shall occupy, as owner or renter, any land granted by her Majesty the Queen, of the yearly value of ten pounds, or who shall, with the consent of her said Majesty, occupy any of as yet ungranted land, of the said value, or who shall occupy any house, warehouse, shop, or office, erected or being upon any such land as aforesaid, of the same value; or any person who shall be the son of any such person as aforesaid, shall be qualified and liable to serve on any jury which shall be impannelled in the district court. Property qualification.

4. And be it enacted, that on or before the first day of January next, or such other day as the lieutenant-governor of the said district shall by his proclamation, to be posted upon or affixed to some public place in Pietermaritzburg, proclaim and declare, and on or before the first day of January, in every subsequent year, it shall and may be lawful for such officer or officers as shall in that behalf be, from time to time, appointed by the lieutenant-governor of the said district, to prepare and make out a true list, or true lists, of every man residing within the said district, who shall be qualified and liable to serve on juries as aforesaid, with the christian and surnames written at length, the true place of abode, the title, quality, calling, or business, and the nature of the qualification of every such man, in the proper columns of the form of the jury list set forth in the schedule hereunto annexed. Provided always, that every such officer may have such a convenient portion or division of the said district allotted to him for the purpose aforesaid, as the said lieutenant-governor shall, from time to time, determine. Lists of jurors to be proclaimed and made known. What such lists shall contain.

5. And be it enacted, that when and as soon as any such officer aforesaid shall have prepared and made out any such list as aforesaid, he shall cause a copy of it to be posted upon, or affixed to, some public place at Pietermaritzburg, or elsewhere, in case the lieutenant-governor Such lists to be posted.

Objections to be heard by district court.

aforesaid should so direct, and that every such list so posted shall have subjoined thereto a notice, stating that all objections to the said list will be heard by the district court of Natal, to be holden at some particular place, to be mentioned in the said notice, at some certain time to be therein stated, which shall not be less than seven days from the time of the posting of such list. Provided always, that no list shall be capable of being so posted which shall contain the names of fewer than twenty-one persons; and provided that successive lists, containing together the names of all persons within the said district, qualified and liable as aforesaid, shall be prepared and posted with all convenient speed.

A list to contain names of at least 21 persons.

District court to reform errors in lists.

6. And be it enacted, that the district court aforesaid, holden in pursuance of the notice as aforesaid, shall upon proof to its satisfaction by the oath or affidavit of the party complaining, or of any other person, reform all errors which may have been committed by omission or otherwise in preparing the said lists, by improperly inserting the name of any person not qualified or liable, or by improperly omitting the name of any person qualified and liable to serve on juries as aforesaid; and shall also strike out of the said list the names of all persons therein inserted, who shall be proved by oath or affidavit as aforesaid, or who, on personal examination by the said magistrate, shall be found to be disabled from serving on juries by mental imbecility, or any permanent bodily infirmity or defect.

Jurors' book to be made up from lists so reformed.

7. And be it enacted, that as soon as such lists shall have been reformed as aforesaid, it shall be the duty of such officer as shall be, in that behalf, appointed by the lieutenant governor aforesaid, to receive the same from time to time, from the district court aforesaid, and to prepare therefrom, by fairly and truly copying the same respectively into a book, to be called "*The jurors' book for the district of Natal,*" and the said list shall be used until new lists shall be prepared, posted, and reformed and received as aforesaid, when the former lists shall, from time to time, become void and of no effect.

Rules of court to regulate mode of summoning, &c.

8 And be it enacted and declared, that the summoning, empannelling, and challenging of jurors from and out of the persons mentioned in the jurors' book aforesaid, shall be regulated by such rules and orders of court in that behalf as the district court aforesaid, under and by virtue of the 29th section of Ordinance No. 14, 1845, shall frame, constitute, and establish. Provided always, that all persons mentioned in any list which shall have been reformed as aforesaid shall be liable to be summoned and

Liability to serve though jurors' book be not completed.

to serve, although the jurors' book aforesaid shall not have yet been completed, and although such lists, so reformed, may not contain the names of all persons qualified and liable to serve as jurors within the said district.

Deficiency of jurors summoned, how to be supplied.

9 And be it enacted, that when it shall happen, at any session of the district court for the trial of criminal cases, that nine men qualified and liable to serve on juries in such court shall not have been summoned, or shall not appear, or shall not remain as fair and indifferent after all just cause of challange, then, and in every such case, it shall be lawful for any officer of the said court or other person, when commanded so to do by any order made or writ issued by such court for that purpose, to summon and return so many men of those present in or within the precincts of the said court, or summon and return so many men residing or being at the time in the vicinity of the said court, or of the town or place in which it is held, being qualified and liable to serve on juries, as shall be necessary to make up the lawful number of jurors; and every such person, so summoned and returned, shall, notwithstanding of his being employed in the civil service of Her Majesty's Government, or of his holding the office of field-cornet, or church clerk (if he shall consent to serve), be qualified to serve on any jury which shall be empannelled during the said session of such court.

In that case civil servants qualified.

Persons summoned liable to a fine of £10 for non-attendance.

10. And be it enacted, that if any man, having been duly summoned, under and by virtue of any rule, order, or writ, made or issued by the district court, to attend before any such court to serve as a juror, shall not attend pursuant to such summons, or being thrice called shall not answer to his name, or after his appearance shall wilfully withdraw himself from the said court, unless he shall have been adjudged by the said court to be disabled or disqualified, then and in every such case, it shall and may be lawful for the said court to set such fine upon every man so making default (unless some reasonable excuse shall be proved by oath or affidavit) as the court shall think meet, not exceeding the sum of *ten pounds* sterling.

Commencement of law.

11. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the lieutenant-governor of the said district for that purpose issued, and posted upon, or affixed to, any public place in Pietermaritzburg aforesaid.

Schedule.

FORM OF JURY LIST.

Christian and Surname at full length.	Place of Abode.	Title, Quality, Calling, or Business.	Nature of Qualification.

No. 1,—1846.] ORDINANCE. [Jan. 7, 1846.

For the Regulation of the Post Office and Postage.

Preamble.

WHEREAS it is expedient that the present rates of inland postage on letters should be reduced to one uniform rate, to be charged on every letter of a given weight, with a proportionate increase for greater weights, and that official and other franking should be abolished, and that the Governor should be authorised and empowered to make certain rules and regulations, touching and concerning the management of the post office and the rates of postage,—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the Ordinance No. 25, 1826, entituled "Ordinance for the better regulation of the Post Office in the Colony of the Cape of Good Hope," and the Ordinance No. 56, 1829, entituled "Ordinance for altering and amending the Ordinance No. 25, entituled 'An Ordinance for the better regulation of the Post Office in the colony of the Cape of Good Hope,'" and the Ordinance No. 3, 1834, entituled "Ordinance for altering and amending the Ordinances entituled respectively, 'Ordinance of His Honor the Lieutenant Governor in Council, for the better regulation of the Post Office in the colony of the Cape of Good Hope,' dated the 9th day of October, 1826; and the 'Ordinance of His Excellency the Governor in Council, for altering and amending the Ordinance No. 25, entituled 'An Ordinance for the better regulation of the Post Office in the colony of the Cape of Good Hope,' dated the 9th day of February, 1829," shall, except in so far as the same, or any of them, may repeal any former laws or ordinances, or parts thereof, be repealed, and the same are hereby repealed accordingly. Provided always, that the repeal aforesaid shall not be construed so as to prevent or defeat the recovery of any

Repeal of former laws.

Except as to liabilities and penalties incurred under them.

postage due and unpaid at the time of the commencement of this Ordinance, nor so as to apply to any letters which shall then be lying undelivered in any post office in this colony, or to any offence or penalty committed or incurred in respect to the Ordinances aforesaid, or any of them, before the time of the commencement of this Ordinance, which postage, letters, offence, or penalty shall be deemed, taken, and judged of, as if the said Ordinances hereby repealed were still in force and operation.

Letters to be charged for by weight.

2. And be it enacted, that upon all letters transmitted by the post between places within this colony (not being letters sent to or from parts beyond the seas), there shall be charged and paid, according to weight only, and without reference to the distance or number of miles the same shall be conveyed, the rates or duties following, that is to say :—

Fourpence up to half ounce, eightpence up to one ounce.

On every letter not exceeding half an ounce, four-pence.

On every letter exceeding half an ounce, and not exceeding one ounce, eight-pence.

Eightpence for each additional ounce, or fraction of an ounce.

3. And be it enacted, that for every ounce which any letter shall weigh over and above the weight of one ounce, there shall be charged and taken an additional sum of eight-pence, and that every fraction above the weight of one ounce, shall be charged as an additional ounce.

Governor may fix what shall be a letter's greatest weight.

4. And be it enacted, that it shall and may be lawful for the Governor to fix and limit, from time to time, by any proclamation, to be by him in that behalf issued, as occasion shall or may require, what shall be the greatest weight of any inland letter to be forwarded by the post.

Letters to be posted, &c. as Governor may direct.

5. And be it enacted, that all post letters shall be posted, forwarded, conveyed, and delivered under and subject to all such orders, directions, and regulations, and under and subject to all such conditions, limitations, and restrictions, as to the form, size, dimensions, enclosures or otherwise, as the Governor shall, from time to time, direct and appoint.

Governor may provide for franking letters on H.M.'s service;

6. And be it enacted, that it shall and may be lawful for the Governor, by such rules, orders, and regulations as he shall, in that behalf, from time to time, establish, to provide that all letters upon the service of Her Majesty the Queen, whether civil or military, shall be forwarded and received free of any charge of postage.

May fix number of post offices within the colony, may appoint offices of delivery in towns, and fix the rates for such town delivery so as not to exceed country rates.

7. And be it enacted, that it shall and may be lawful for the Governor to appoint so many post offices within the colony as he shall deem expedient, and from time to time to change the same, and to establish offices for posting and delivering letters within the limits of any town, as such limits shall, for that purpose, be fixed by

the said Governor; and to fix the rate of postage which shall be charged and paid in regard to any such town delivery; and to fix the hours at which all post offices shall open and close, and the hours at which town delivering post offices shall deliver letters. Provided, however, that the rate of postage to be charged and paid in regard to any letter posted and delivered in any such town as aforesaid, shall in no case exceed the rate of postage which would be charged and payable upon the same letter according to the scale of postage hereinbefore set forth.

He may provide for having stamped covers &c.

8. And be it enacted, that it shall and may be lawful for the Governor to provide, or cause to be provided, proper and sufficient dies or implements for expressing and denoting any rate or rates of postage, for the time being, chargeable and payable, under the provisions of this Ordinance, and when and as soon as such dies or implements shall be provided, to announce, by his Proclamation in the *Government Gazette*, that stamped covers for letters, and stamps to be affixed to letters, will be issued to the public by such persons or at such places as in the said Proclamation shall be mentioned and set forth, upon payment of the amount denoted by the stamp or stamps required; and that, from and after some certain date, to be in the said Proclamation mentioned, every letter posted in any town or place within this colony, and enclosed in such a stamped cover as aforesaid, or having such a stamp or such stamps as aforesaid affixed thereto and appearing on the outside, of equal value or amount to the rate of postage which would be chargeable and payable upon such letter according to the scale of postage hereinbefore set forth, shall, in case no such stamps shall have been used before, pass by the post free of postage.

These to be of equal value with the rate of postage otherwise chargeable.

Petitions to pass free; conditions.

9. And be it enacted, that all petitions addressed to the Legislative Council shall pass free of postage, provided the same shall be directed to the clerk of the said council, as shall also any letter enclosed therein, referring to the subject matter of the said petitions.

Letters not stamped or pre-paid to be charged one-half rate additional.

10. And be it enacted, that in all cases in which any inland letter shall be posted without any stamp thereon, or on the corner thereof, and without the postage being prepaid, there shall be charged and paid on such letter a postage greater by one half than the postage which would have been chargeable and payable upon such letter, according to the scale of postage hereinbefore set forth, had the same been prepaid.

Where such letter is refused, &c. the writer must pay the postage.

11. And be it enacted, that the postage of any such letter as is in the last preceding section mentioned, shall be paid by the person to whom the letter is addressed, on

the delivery thereof to him; but if the letter be refused, or the party to whom it is addressed shall be dead, or cannot be found, the writer or sender shall pay the postage; and in order to ascertain who such writer or sender is, such letter may, in case the name and address of the writer shall not have been written on the outside of the letter when posted, be opened in the post office; and this enactment shall apply to every packet, newspaper, or thing whatsoever chargeable with postage and transmitted by the post.

To this end letters may be opened.

12. And be it enacted, that on every post letter re-directed and forwarded (whether prepaid or posted with any stamp thereon or not) there shall be charged for postage from the place at which the same shall be re-directed to the place of ultimate delivery (in addition to all other rates of postage payable thereon) such a rate of postage as the same would be liable to if prepaid.

Letters re-directed, chargeable from place of re-direction to place of delivery.

13. And be it enacted, that no letters shall be transmitted by any vehicle used for the public conveyance of passengers or goods, unless in any post office bag which may be thereby conveyed; and any person who shall send or convey any letter by such vehicle, except as aforesaid, shall incur and be liable to a penalty not exceeding ten pounds.

Letters not to be conveyed by public vehicles otherwise than in post bags.

Penalty.

14. And be it enacted, that every person employed to convey or deliver a post letter bag or a post letter, who shall whilst so employed, whilst the same shall be in his custody, care, or possession, be guilty of any act of drunkenness, carelessness, negligence, or other misconduct, whereby the safety of such post letter bag or post letter shall be endangered, or who shall receive, convey, or deliver any letter otherwise than in the ordinary course of the post, or who shall wilfully mis-spend his time so as to retard or delay the progress or arrival of such post letter bag or post letter, such person being thereof convicted shall forfeit any sum not exceeding ten pounds.

Post carriers—Negligence, &c., or private conveyance of letters.

Penalty, £10.

15. And be it enacted, that it shall and may be lawful for the officer in charge of, or for any person employed to receive letters in, any post office in this colony, and he is hereby required, to grant a receipt for any letter delivered to or into such post office, should the person delivering the same require such receipt. Provided always that no person shall be entitled to require such receipt unless he shall, at the time of the delivery of the letter, produce the same filled up and ready for signature,—and pay, at the same time, a charge of sixpence for such receipt. And provided also that the officer granting any such receipt, shall, before granting the same, note or mark

Receipts may be granted for letters, if presented ready for signature, upon payment of 6d.

thereon the amount of postage paid upon the letter received, when such postage shall be prepaid.

Postmaster may forward by ship, letters from and to places in the colony;

16. And be it enacted, that the postmaster general may forward letters between places within this colony, by any ships or vessels which he shall deem it expedient to employ for that purpose, and all letters so forwarded shall be considered as forwarded by the post between such places, and be charged accordingly.

And may forward and receive letters to and from places beyond sea.

17. And be it enacted, that the postmaster general and the officers in charge of the various post offices throughout the country may collect and receive letters to forward to places beyond sea, and may forward the same accordingly, and may collect and receive letters brought from places beyond sea.

Such letters to be charged at the rate of 4d; but if posted to or from any office, other than that nearest where ship lies, then additional rate payable as upon inland letters.

18. And be it enacted, that every letter posted to be forwarded by ship or vessel to any place beyond sea, or received by ship or vessel from any place beyond sea, in the post office of the town or place at or nearest to the harbour in which such ship or vessel shall be lying, shall (unless exempted from the payment of postage by any of the provisions of this ordinance) be charged with a duty or rate of four-pence postage, without reference to the weight of such letter; but every letter posted to be forwarded beyond sea in any post office of the colony, other than that of the town or place aforesaid, and every letter received from beyond sea in any ship or vessel, in such last mentioned post office, and to be forwarded to any other town or place within the colony, shall pay, in addition to the said sum of 4d., such further rate of postage as, under the provisions of the second section of this Ordinance, would be payable upon such letter considered as an inland letter.

Postage in such cases to be pre-paid.

19. And be it enacted, that in regard to every letter posted in any post office in this colony to be forwarded beyond sea, the rate of postage payable thereon, as in the last preceding section mentioned, shall be paid at the time of the posting of the same, and in case any such letter shall be posted without such postage being so paid, it shall be returned to the sender or writer, who shall be liable to pay, in respect of such return, such rate of postage as would have been payable upon such letter if posted to be forwarded from one place within this colony to any other place.

Ship master, &c., retaining letters.

20. And be it enacted, that every person, being either the master of a vessel inward bound, or one of the officers, or one of the crew, or a passenger thereof, who shall knowingly have any letter in his possession (excepting such as may have been entrusted to his peculiar care)

after the master shall have sent any part of his ship's letters to the post office, or after demand for ship's letters made by a person authorised by the postmaster general to demand such letters, shall forfeit, for every letter, a sum not exceeding five pounds. Provided that nothing herein, or in this Ordinance contained, shall alter or affect the 9th section of Ordinance No. 4, 1844, entituled 'Ordinance relating to Merchant Vessels arriving in the Ports of this Colony," which section shall remain and continue in full force and effect.

Penalty £5.

21. And be it enacted, that the postmasters stationed at or nearest to the several ports or harbours in this colony, shall respectively pay to the master of any vessel arriving therein respectively, or to any other person duly authorised by such master to receive the same, the sum of one penny for every letter liable to pay postage, which shall be by such master delivered to such postmaster; and such payments shall be charged by the postmasters making the same to their contingent account. Provided always, that nothing shall be payable for or on account of any dispatch box addressed to the Governor of this colony, or anything therein contained.

Postmaster to pay 1d. per letter to shipmaster.

Governor's despatch boxes not chargeable.

22. And whereas it is expedient to declare so much of the law as contained in the 35th section of an Act made and passed in a session of Parliament holden in the 3rd and 4th years of her Majesty the now Queen, chapter 96, as is applicable to this colony, and to enact certain additional provisions, be it accordingly declared and enacted that all letters of owners, charterers, or consignees of vessels arriving in any of the ports or harbours of this colony, or of owners, consignees, or shippers of goods on board such vessels, shall have their letters by such vessels free of postage (except as hereinafter excepted) if to be delivered at the port or place of the ship's arrival; and if to be delivered at any other place within this colony, then on payment of such rates of postage as the said letters would, if pre-paid, have been liable to pay for conveyance thereof from the port or place of arrival to the place of delivery. Provided always, that all such letters as aforesaid brought by one vessel to any such person as aforesaid, shall not collectively exceed six ounces in weight; and provided that the owner, charterer, or consignee shall be described as such on the address and superscription; and provided that in case of owners, shippers, or consignees of goods, it shall also appear by the ship's manifest that they have goods on board the vessel. Provided, also, that the persons hereby exempted shall be entitled to have and receive all their letters which come within the above conditions

Extension of Act 3d & 4th Vic., c. 96, as to letters of owners, charterers, &c.

Such letters to any one person, not to exceed six ounces.

directly from on board the ship, and without transmission of the same through the post office; but if, nevertheless, any such letters should be delivered from on board the vessel into the post office, then such letters shall be chargeable with the gratuity to the master of the vessel as in the preceding section mentioned (in addition to the postage, if any, payable thereon), and may be detained until such gratuity shall be paid.

Such letters when delivered into post office, liable to gratuity as well as postage.

Governor may alter gratuity to ship masters,

23 And be it enacted, that it shall and may be lawful for the Governor aforesaid, by proclamation, to alter, raise, or reduce, as may, from time to time, be deemed expedient, the rate of gratuity to be paid to masters of vessels conveying letters into any of the ports of this colony.

Newspapers, postage 1d.

24. And be it enacted, that it shall be lawful for the postmaster-general, and the several postmasters in this colony, and they are hereby required, to demand and receive for each newspaper or journal printed in the colony, one penny, to be paid on being put into the post office,—provided such newspaper or journal be sent without cover, or in a cover open at the sides; and it shall be lawful for the postmaster-general, and postmasters throughout the colony, to examine and search any packet sent without a cover, or in a cover open at the sides, in order to discover whether any other paper or thing whatsoever be enclosed with such printed paper permitted to be sent at the rates aforesaid, and in order to discover whether the said printed papers liable to stamp duty, shall have been duly stamped: and in case any other paper or thing whatsoever shall be found to be enclosed or concealed in or with such paper as aforesaid, or in case there shall be any writing other than the superscription upon such printed paper, or upon the cover containing the same, the whole of such packet shall be charged with treble the postage of a letter; and in case any newspaper, or other printed paper liable to stamp duty, shall appear not to have been duly stamped, every such postmaster is hereby required to stop the same, and send it to the distributor of stamps in Cape Town: Provided always, that no charge shall be made for the conveyance of the *Government Gazette* by post throughout the colony.

What, if any thing be enclosed in, or written upon.

What, if not stamped.

Government Gazette transmitted free.

Newspapers, enclosing letters, &c. therein.

25. And be it enacted, that every person who shall knowingly enclose, or cause or procure to be enclosed, in a newspaper to be sent by the post, or under the cover thereof, any letter, or paper, or thing (except such newspaper), and every person who shall wilfully print or cause to be printed, any words or communication, either upon any such newspaper after the same shall have been pub-

lished, or upon the cover thereof, or who shall put, or cause to be put, any writing or marks either upon the newspaper or under the cover thereof, other than the name and address of the person to whom it shall be sent, and every person who shall knowingly either send or cause to be sent by the post, a newspaper in respect of which any one of the offences hereinbefore mentioned, shall be committed, shall, for every such offence forfeit a sum not exceeding ten pounds. Penalty £10.

26 And be it enacted, that all printed newspapers and journals, arriving from abroad, addressed to any person residing in this colony, shall be delivered at the post office of the port where the vessel conveying the same shall arrive, free of postage, and, if forwarded by the inland post, shall be chargeable with one penny each on delivery thereof, provided the weight of the same does not exceed one ounce; and if the same shall exceed the weight of one ounce, then at and after the rate of one half penny for each additional ounce or fraction of an ounce. Newspapers from abroad, delivered free at port town; inland charge 1d., if not exceeding one ounce.

27. And be it enacted, that in case any person to whom a printed newspaper brought into this colony shall be directed shall have removed from the place to which it shall be directed, before the delivery thereof at that place, it may (provided it shall not have been opened) be re-directed and forwarded by post to such person at any other place within the colony free of charge for such extra conveyance; but if such newspaper shall have been opened it shall be charged with the same rate of postage as if it were a letter from the place of re-direction to the place at which it shall be ultimately delivered Such newspapers, if not opened, free of charge for extra conveyance.

28. And be it enacted, that every newspaper published in this colony, and intended for delivery within the colony, shall in all cases be put into a post office in the colony within seven days next after the day on which the same shall be published, the day of publication to be ascertained by the date of such paper; and in case a paper shall be put into a post office after the expiration of such seven days, the postmaster-general may either detain the paper, or forward it by post charged with full postage as a letter. Colonial newspapers to be posted within seven days from publication, otherwise full postage.

29. And be it enacted, that it shall and may be lawful for the Governor aforesaid, whenever he shall deem it practicable and expedient so to do, to reduce or abolish the charge of postage upon newspapers, provided that such reduction or abolition shall be announced by Proclamation in the *Government Gazette*. Governor may abolish postage on newspapers.

30. And be it enacted, that the following classes of persons may both send and receive letters not exceeding Seamen's and soldiers' letters up to half ounce, postage 1d.

half an ounce in weight, by the post, at a postage of one penny for each letter; namely,—

Every seamen employed in her Majesty's navy, whilst such seamen shall be actually employed in her Majesty's service in this colony.

Every serjeant, corporal, drummer, trumpeter, fifer, and private soldier in her Majesty's land forces, whilst actually employed in her Majesty's service in this colony.

But the letters of commissioned officers or warrant officers, whether in the army or navy, or midshipmen, or master's mates of the navy, are not included in this provision.

Conditions to be observed as to letters addressed to such privileged persons.

And with respect to letters sent from any place to this colony by any such privileged persons, the following conditions shall be observed,—that is to say, the postage of each letter shall be paid on the letter being put into a post office, and upon such letter shall be superscribed the name of the writer, and his class or description in the vessel, regiment, corps, or detachment to which he shall belong, and upon every such letter there shall be written in the handwriting of the officer having at the time the command of the vessel, or of the regiment, corps, or detachment to which the privileged person belongs, the name of such officer, and the name of such vessel, or of such regiment, corps, or detachment.

Conditions to be observed, as to letters from such privileged persons.

31. And with respect to letters addressed to any of the said privileged persons, the following conditions shall be shall be observed,—that is to say, the postage of each letter, if the same be posted within the colony, shall be paid upon putting it into the post office, and it shall be directed to the privileged person, specifying on the superscription thereof the vessel, or the regiment, corps, or detachment to which he shall belong, and the postmaster of the place to which such letter shall be sent to be delivered shall not deliver such letter to any person, except the person hereby privileged to whom it shall be directed, or to some person appointed to receive the same by writing under the hand of the officer in command. And whenever any such letter shall have been sent to any such privileged person from parts beyond the sea, every such letter shall be charged to the party receiving the same with a rate of two pence; and any letters received by the post under this enactment by any such privileged persons, which letters may have been re-directed, shall not be charged any postage on or in respect of such re-direction.

32. And be it enacted, that every person not having at

the time the command of the ship or vessel, or regiment, or corps, or detachment to which any person belonging to Her Majesty's land or sea forces, and who is privileged as aforesaid, belongs, who shall write his name upon a letter, in order that the same may be sent at a lower rate of postage than by law established, in regard to letters or persons not privileged, shall for every such offence forfeit five pounds; and every person who shall wilfully address a letter to any such privileged person, which shall be intended for another person, or which shall be concerning the affairs of another person, with intent to evade the payment of the rate of postage in regard to letters of persons not privileged, shall for every such offence forfeit five pounds; and every person who shall, with intent to evade any postage or any amount of postage, falsely superscribe a letter as being the owner or the charterer, or the consignee of a vessel conveying the same, or as the owner, or the shipper, or the consignee of goods shipped in such vessel, shall for every such offence forfeit ten pounds.

Privilege under sec. 28 if abused.

Penalty £5.

Privilege under sec. 22, if abused.

Penalty, £10.

33. And be it enacted, that except in the cases specified in this Ordinance, all privileges whatsoever of sending or receiving letters by the post free of postage, or at any reduced rate of postage, shall wholly cease and determine.

Privileges, except under this Ordinance, to cease.

34. And be it enacted, that no person shall post or cause to be posted, or send or cause to be sent, or tender, or deliver, in order to be sent by the post, any letter containing any explosive or other dangerous material or substance, on pain of forfeiting a sum not exceeding twenty pounds, in addition to the punishment by law provided for any offence which such person may, by or in consequence of any such act, be held to have committed.

Sending explosive substances in letters.

Penalty £20.

35. And whereas it is expedient that regulations should be made for enabling the public to remit small sums of money through the post office by means of money orders, to be given by and upon the different postmasters of different towns respectively: Be it enacted, that it shall and may be lawful for the Governor of this colony, by proclamation, to announce, for general information, the places where, and the terms, conditions, and restrictions under which such money orders may be obtained. Provided always, that any permium or poundage arising therefrom shall be considered as post office revenue, and applied accordingly.

Post-office money orders.

Terms, &c., to be fixed by Governor.

36. And be it enacted, that all weights mentioned or referred to in this Ordinance shall be deemed and taken to mean English standard weights, avoirdupois.

Weight—English avoirdupois.

Opening letters, and other misconduct by parties connected with Post-office.

37. And be it enacted, that every person employed by or under the postmaster general, who shall, contrary to his duty, open, or procure or suffer to be opened, a post letter, or shall wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter, shall be guilty of the crime of contravening this section of the present Ordinance, and upon conviction thereof shall suffer such punishment by fine not exceeding £50, or imprisonment not exceeding one year, or by both, as to the court shall seem meet. Provided always that nothing herein contained shall extend to the opening or detaining or delaying of a post letter returned for want of a true direction, or of a post letter returned by reason that the person to whom the same shall be directed is dead, or cannot be found, or shall have refused the same, or shall have refused or neglected to pay the postage thereof. Provided also that nothing herein contained shall be construed so as to prevent any such person as aforesaid, from being tried and punished for any other or greater crime or offence which he shall commit in regard to any letter or the contents thereof, before, or at, or after the opening, detention, or delaying of the same.

Penalty £50, and one year's imprisonment.

Exception.

Fraudulent detention, &c. of post-letters and mail-bags.

38. And whereas post letters may sometimes by mistake be delivered to a wrong person, and post letters and post letter bags may be lost in the course of the conveyance or delivery thereof, and be detained by the finders in expectation of gain or reward; Be it enacted, that every person who shall fraudulently retain, or shall wilfully secrete or keep or detain, or, being required to deliver up by an officer of the post office, shall neglect or refuse to deliver up a post letter which ought to have been received by any other person; or a post letter which shall have been lost, whether the same shall have been found by the person secreting, keeping, or detaining, or neglecting, or refusing to deliver up the same, or by any other person, shall be guilty of the crime of contravening this section of the present Ordinance, and upon conviction thereof, shall suffer such punishment by fine not exceeding £50, or imprisonment not exceeding one year, or by both, as to the court shall seem meet.

Penalty £50, and one year's imprisonment.

Offences, how to be prosecuted.

39. And be it enacted that every offence against any of the provisions of this Ordinance shall and may be prosecuted in the court of the resident magistrate in whose district such offence shall have been committed, or in any other competent court, and all monies recovered or received by way of penalties or forfeitures under any of the said provisions, shall be paid to the informer, if there be such, or

otherwise to the colonial treasury; and any person who shall be adjudged by any competent court to pay any such penalty or forfeiture as aforesaid, who shall not forthwith pay the same, may, by order of the court adjudging the same, be imprisoned, with or without hard labour, for any term not exceeding three months, unless he shall sooner pay the amount of the penalty or forfeiture incurred and adjudged. Provided that it shall and may be lawful for the Governor wholly to remit or mitigate any such penalty or forfeiture as aforesaid.

Penalties, how to be applied.

40. And be it enacted, that all penalties and forfeitures incurred by any person for any contravention of this Ordinance shall be sued for within one year next after the penalty or forfeiture shall be incurred, and not afterwards.

Penalties must be sued for within one year.

41. And be it enacted, that in every case where any crime or offence shall be committed in respect of a post letter bag or a post letter, or any money, matter, or thing sent by the post, it shall be lawful to lay in the indictment or plaint to be preferred against the offender the property or lawful possession of the post letter bag, or of the post letter, or of the money, matter, or thing sent by post, to the postmaster-general.

In plaint, &c., property may be laid as in post-master-general.

42. And be it enacted, that in the interpretation of this Ordinance the term "Governor" shall mean the officer for the time being administering the government of this colony; and that the term "master of a vessel" shall include any person in charge of a vessel, whether commander, mate, or other person, and whether the vessel be a ship of war or other vessel; and that the term "inland letter" shall denote a letter posted at some place within this colony, and to be delivered at some place within the same; and every officer mentioned shall mean the person for the time being acting as such; and wherever with reference to any person, matter, or thing, or to any persons, matters, or things, the singular or plural number, or masculine gender only is expressed, such expression shall be understood to include several persons, matters, or things, as well as one person, matter, or thing; and one person, matter, or thing as well as several persons, or matters, or things, and females as well as males, unless the subject or context be repugnant to such construction.

Interpretation—"Governor," "Master of a vessel," &c.—number and gender.

43. And be it enacted, that this Ordinance shall commence and take effect from and after the 1st day of March in the year of our Lord 1846.

Ordinance when to take effect.

No. 2.—1846.] ORDINANCE [Jan. 7, 1846.

For creating a Deeds' Registry Office for the district of Natal.

Preamble.

WHEREAS it is expedient to create a deeds' registry office for the district of Natal:—Be it enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that it shall and may be lawful for the lieutenant-governor of the district of Natal to appoint some fit and proper person to be and act as registrar of deeds for the said district,

Registrar of Deeds at Natal, to be appointed by Lieut.-Governor.

Deeds, &c., to be enregistered in like manner as at Cape Town.

2. And be it enacted, that it shall and may be lawful for such registrar of deeds, and he is hereby required, to certify, enregister, and subscribe all deeds, acts, and instruments relating to persons or property within the district of Natal, presented for registration and proper for the same, in manner and form as the registrar of deeds at Cape Town is authorised and required to certify, enregister, and subscribe deeds, acts, and instruments relating to persons or property within those parts of this colony other than the said district.

Deeds, &c., of a nature competent or incompetent to be registered at Cape Town, are, *mutatis mutandis*, competent or incompetent at Natal.

3. And be it enacted, that the registrar of deeds for the district of Natal shall certify, register, and subscribe no deed, act, or instrument, which deed, act, or instrument, *mutatis mutandis*, would, from its form or nature, be incompetent to be registered in the deeds' registry office at Cape Town; and, *vice versa*, every deed, act or instrument which would, from its form and nature, be competent to be registered in the deeds' registry office at Cape Town, shall, *mutatis mutandis*, be enregistered in the deeds' registry office of Natal, and the same legal consequences, in every respect, which would attach to the registration or non-registration of any deed, act, or instrument, according to the laws now in force in those parts of the colony other than the said district of Natal, shall attach and become operative in regard to the registration or non-registration of any deed, act, or instrument of the same kind, denomination, or description, within the said district of Natal.

The legal effects of registration or non-registration extended to latter district.

Fees payable at the Deeds' Registry Office.

4. And be it enacted that the several fees and charges following, and none other, shall be payable to the registrar of deeds for the said district, for account of her Majesty the Queen, her heirs and successors, in regard to the several following matters and things respectively, that is to say,—

For the preparation, in the deeds' registry office, of any deed of transfer or hypothecation of immoveable property - -	£1 1 0

For the registration of any such lastmentioned deed, prepared elsewhere. - -	0	10	6
For the registration of a notarial bond or obligation, in the name of each debtor and each surety—for each debtor and surety respectively. - - - - -	0	3	0
For a search of the books of transfer or debt registry—for each letter searched, -	0	2	6
For every registration, entry, or other act, to be made or done in the deeds' registry office, not being any of the matters or things aforesaid, - - - - -	0	1	6

Ordinance, when to take effect.

And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the lieutenant-governor of the said district for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg aforesaid.

No. 3,—1846.] ORDINANCE [Jan. 7, 1846.

For Regulating the payment of Transfer Duties in the District of Natal.

Preamble.

WHEREAS it is expedient to provide for the payment of transfer duty upon the sale and transfer of immoveable property within the district of Natal: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force in the said district, so far as the same are repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be repealed, and the same are hereby repealed accordingly.

Former laws and customs repealed.

Certain sections of ordinance No. 18, 1844, extended to Natal.

2. And be it enacted, that (subject to the several modifications and alterations hereinafter made and provided) all and singular the clauses and provisions of the 2nd and remaining sections of Ordinance No. 18, 1844, entituled "Ordinance for regulating the payment of transfer duty in this colony," (except the 6th, 9th, 12th, 21st, 22nd, 23rd, 24th, and 25th sections) together with the several schedules to the said Ordinance annexed, shall be deemed and taken to be incorporated in this Ordinance, and be of the same force and effect in regard to the district of Natal as if the same were herein again set forth at length, and word for word repeated, and declared to be applicable to, and operative in, the said district.

Duties to whom payable.

3. And be it enacted, that all duties payable under and by virtue of this Ordinance shall be payable to such person or persons as the lieutenant-governor of the district

aforesaid shall, by any proclamation to be by him issued in that behalf, and posted upon or affixed to some public place in Pietermaritzburg in the said district, from time to time appoint, which person or persons shall possess and perform, within or in regard to such immoveable property as shall be situated within such limits or divisions as the said lieutenant-governor shall, from time to time, fix and determine, the several functions in and by any of the sections aforesaid of the Ordinance aforesaid which are hereinbefore incorporated into this Ordinance, assigned to the civil commissioner within or in regard to his division. Provided always, that nothing herein contained shall be construed so as to require the said lieutenant-governor to appoint more persons than one to receive such duties as aforesaid, for or in respect of the entire of the district aforesaid.

Immoveable property, duty payable on every sale, &c., of any interest in, right to, or expectation of.

4. And be it enacted, that every sale or change of ownership of any interest in, right to, or expectation of, any immoveable property within the said district made, at any time heretofore, by the person in whose name the quit-rent grant or title-deed shall have been, or shall be, issued or issuable, or by any person claiming from or under him, shall be deemed to be a sale or change of ownership of such property chargeable with duty; and shall, unless it come within some of the exemptions from the payment of such duty in this Ordinance contained, pay the same accordingly.

Exceptions.

Declaration substituted for oath.

5. And whereas it is expedient that a solemn declaration should be substituted in place and stead of the respective oaths in the 8th and 10th sections of the Ordinance aforesaid (which are hereinbefore incorporated into this Ordinance), and in the 2nd, 3rd, and 4th schedules attached to the said Ordinance, mentioned and set forth: Be it enacted, that in place and stead of each of the said oaths respectively, there shall, for the purposes of this Ordinance, be made and subscribed a solemn declaration to the same effect, which declaration shall be formed by substituting in the forms in the schedules aforesaid set forth, for the words "*do solemnly, in the presence of of Almighty God, profess, testify, and declare*," the words "*do solemnly and sincerely declare*," and for the word "*swear*," as often as the same occurs in any of the said forms, the word "*declare*," and by omitting at the end of the said forms respectively the words "*so help me God.*"

False declaration punishable as perjury.

6. And be it enacted, that if any person, having taken and subscribed before any person or persons appointed as aforesaid by the lieutenant-governor aforesaid any such

solemn declaration as aforesaid, shall wilfully and corruptly have made any false statement therein, such person shall be deemed to be guilty of the crime of contravening this section of the present Ordinance, and shall, upon conviction thereof, suffer such punishment as shall be by law provided for the crime of perjury.

Interpretation, certain offices, &c., in ordinance 18, 1844, to mean certain offices, &c., at Natal.

7. And be it enacted, that, when and as often as the words "deeds' registry office of this colony," or "deeds registry office," occur in any of the sections of the Ordinance aforesaid which are hereinbefore incorporated into this Ordinance, they shall be taken and construed to denote the deeds' registry office for Natal; and that the term "registrar of deeds" in any of the said sections shall be taken and construed to denote the registrar of deeds for Natal; and that the term "colony" in that one of the said sections numbered 11, shall be taken and construed to denote the district of Natal; and that the terms "chief justice of the colony, or any other of the judges of the supreme court," in that one of the said sections numbered 18, shall be taken and construed to denote the "recorder of the district of Natal;" and that the term "supreme court," where it last occurs in the last-mentioned section, shall be taken and construed to denote the "district court of Natal;" and that in the interpretation of this Ordinance the term "lieutenant-governor" shall mean the officer for the time being administering the government of the district of Natal; and that whenever any officer is mentioned, the term used shall extend to and embrace the officer for the time being, acting as such; and that the term "government" shall mean the local executive government of the said district; and that the singular number shall include several persons as well as one person; and that the masculine gender shall include females as well as males; unless in any case there be anything in the context repugnant to such construction.

Ordinance, when to take effect.

8. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the lieutenant-governor aforesaid for that purpose issued and posted or affixed, as hereinbefore in the 3d section of this Ordinance directed in regard to the certain proclamation therein mentioned.

No. 4,—1846.] ORDINANCE [Jan. 7, 1846.

For fixing the Age of Majority within the district of Natal:

Preamble.

WHEREAS it is expedient to declare the legal age of majority of all persons residing or being within the district

of Natal; Be it therefore enacted, that all laws heretofore in force in the said district repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

Repugnant laws and usages repealed.

Ordinance 62, 1829, extended to Natal,—age of majority 21 years.

2. And be enacted, that from and after the taking effect of this Ordinance, all and singular the clauses and provisions of the Ordinance No. 62, 1829,—entituled 'Ordinance for declaring the age of twenty-one years to be the legal age of majority in this colony," shall have force and effect within the district of Natal, in like manner precisely as if the same were herein again set forth, and word for word repeated, as part or portion of this Ordinance. Provided always, that in construing the said clauses and provisions the term "this colony," as often as the same occurs therein, shall be deemed and taken to mean the district of Natal.

Ordinance, when to take effect.

3. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the lieutenant-governor of the district aforesaid, for that purpose, issued and posted upon or affixed to any public place in Pietermaritzburg in the said district.

No. 5,—1846.] ORDINANCE [Jan. 7, 1846.

For creating Field-cornets and Constables in and for the District of Natal.

Preamble.

WHEREAS it is expedient that the lieutenant-governor of the district of Natal should be authorised and empowered to appoint field-cornets and constables to act in the said district: Be it therefore enacted, by the governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said lieutenant-governor shall have, possess, and exercise, in regard to the district of Natal, all and singular the like powers and authorities for appointing field-cornets and policemen, and for fixing the limits of field-cornetcies, and of the bailiwicks of constables and policemen, as the governor aforesaid has and possesses in regard to those parts of this colony other than the said district; And every field-cornet, constable, and policeman, so appointed as aforesaid, shall be, within his ward or bailiwick, as the case may be, an officer of the law proper for the execution of criminal warrants, within the meaning of Ordinance No. 18, 1845, and shall, moreover, have and enjoy the powers and authorities, and perform the same or similar duties as those by law belonging to field-cornets, con-

Lieut.-Governor of Natal, may appoint field-cornets, policemen, &c.

Such persons to be officers of the law.

stables, and policemen respectively, in those parts of this colony other than the district aforesaid.

Magistrates may be empowered to appoint policemen, &c.

2. And be it enacted, that it shall and may be lawful for the lieutenant-governor aforesaid, by any writing under his hand, to authorise any magistrate, justice of the peace, or any other person within the district of Natal, to appoint constables and policemen respectively, in such numbers and under such conditions and regulations as the said lieutenant-governor shall, from time to time, fix and prescribe,—and every constable or policeman so appointed shall have and possess the same powers and authorities as a constable or policeman appointed directly by the said lieutenant governer.

Ordinance, when to take effect.

3. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the lieutenant-governor of the said district for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg, in the said district.

No. 6,—1846.] ORDINANCE [Jan. 7, 1846.

For creating Justices of the Peace within the District of Natal.

Preamble.

WHEREAS it is expedient that justices of the peace should be appointed in and for the district of Natal, having the like powers and authorities as justices of the peace in the other parts of this colony: Be it therefore enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that it shall and may be lawful for the lieutenant-governor of the district of Natal to appoint, by commission under his hand and seal, justices of the peace for the said district, and to assign to every such justice of the peace, as the bounds or limits within which he shall be empowered to act, either the whole of the said district, or such a portion or division of the same as he, the said lieutenant-governor, shall deem fitting, and shall define.

Lieut.-governor of Natal may commission justices of the peace.

Such persons to subscribe oath of allegiance and declaration of office.

2. And be it enacted, that every such justice of the peace shall, before acting as such, take and subscribe the oath of allegiance, and make and subscribe the declaration of office, set forth in the schedule hereunto annexed, before the said lieutenant-governor, or the recorder of Natal, or the crown prosecutor of Natal, or any other justice of the peace who shall have taken and subscribed the said oath, and made and subscribed the said declaration.

Jurisdiction, &c., certain provisions of ordinance 32, 1827, to extend to Natal.

3. And be it enacted, that all and singular the clauses and provisions contained in the 2d and remaining sections of the ordinance No. 32, of 1827, entituled "Ordinance for creating justices of the peace in this colony," shall, except as hereinafter in this section excepted, be deemed and taken to apply to the jurisdiction, powers, rights, and privileges of justices of the peace appointed under and by virtue of this ordinance, and that as fully as if the said sections were herein again set forth, and word for word repeated. Provided, however, that when the clerk of the peace is mentioned and referred to in the 3d section of the said ordinance, the crown prosecutor of Natal shall be deemed and taken to be meant and intended:

Justices of the peace to be magistrates under ordinance 18, 1845.

4. And be it enacted, that every such justice of the peace shall be, and is hereby declared to be, a magistrate within the meaning of the Ordinance No. 18, 1845, entituled "Ordinance for regulating the manner of proceeding in criminal cases in the district of Natal."

Ordinance, when to take effect.

5. And be it enacted, that this ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the lieutenant-governor of the district of Natal for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg in the said district.

[SCHEDULE.]

Oath of allegiance.

I, do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, so help me God!

Declaration of Office.

I, do solemnly and sincerely declare, that, as a justice of the peace for the district of Natal, I will do equal right to rich and poor, to the best of my ability, and according to law, and that I will well and truly discharge my duty as justice of the peace, without fear, favor, or affection.

No. 7,—1846.] ORDINANCE [Feb. 16, 1846.

For regulating the manner of Summoning for Land Rent in cases of Desertion of the Land.

Preamble.

WHEREAS it is expedient to amend the Law relative to the manner of summoning persons having or claiming title to any place or property abandoned, deserted, or left derelict, in regard to which any arrear of Land Rent shall

be due to the colonial government, as well as all persons by whom any purchase money of lands or erven, bought by them from the said government, shall be due and owing to the said government: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force in this colony in so far as the same are repugnant to, or inconsistent with, any of the provisions of this Ordinance shall be, and the same are hereby, repealed accordingly.

Parties owing Land Rent to Government to be summoned by one Edictal Summons.

2. And be it enacted, that every person having or claiming title to any such place or property as aforesaid, shall be, and be deemed to have been, duly summoned within the intent and meaning of the 11th section of Ordinance No. 9, 1844, entituled "Ordinance for facilitating the recovery of Land Rents in this colony," when and as often as one edictal citation, granted by the supreme court, and directed to the owner, or supposed owner, of the place or property in question, and all others having or claiming title thereto, shall have been published in the *Government Gazette* of this colony for some space of time, to be fixed by the said court, not less than three weeks, and not exceeding three months; and if no person having or claiming title, as aforesaid, shall appear at the time and place in such citation limited and fixed for such appearance, then all persons having or claiming title as aforesaid shall be deemed to have made default, and thereupon the same consequences, in all respects, shall attach, as if default had been made after three or any other number of edictal citations had successively been granted and published in the usual and customary manner.

Parties owing purchase money to Government, to be summoned in the same manner.

3. And be it enacted, that in every case in which it shall be necessary to summon by edict any person by whom any amount of such purchase money as aforesaid shall be due and owing for the recovery of such amount, such person shall be, and be deemed to have been, duly summoned, to and for all intents and purposes of law, when as often as one edictal citation, as in the 2d section of this Ordinance mentioned, shall have been published as in the said 2d section stated, precisely as if such purchase money were so much land rent.

Ordinance not to extend to Natal.

4. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Time of commencement of this Ordinan

5. And be it enacted that this Ordinance shall commence and take effect from and after the date of promulgation thereof.

No. 8,—1846.] ORDINANCE [Feb. 16, 1846.

For authorising the appointment of a Vestry and Churchwardens for the Episcopal Church about to be erected at Graaff-Reinet.

Preamble.

WHEREAS it is expedient that the inhabitants of Graaff-Reinet and the parochial limits thereof, being members of, and holding communion with, the United Church of England and Ireland, as there by law established, should be invested with the right and privilege of choosing and appointing, under certain regulations, a Vestry and Churchwardens, for the better and more effectual administration and management of all matters connected with the Episcopal Church about to be erected at Graaff-Reinet, and that the said Vestry and Churchwardens, after having been duly appointed, should possess certain powers, and perform certain duties, as the same are usually possessed and exercised by such officers, according to the customs and usages of the said United Church of England and Ireland; and whereas, on the appointment of the said Vestry and Churchwardens, it is expedient that the Committee and Secretary at present constituted should cease and determine:—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that on the first Wednesday in the month next but one ensuing after the promulgation of this Ordinance, and annually afterwards on the same day, a general meeting of the male inhabitants of Graaff-Reinet aforesaid, and of the parochial limits thereof, being of the age of twenty-one years or upwards, and members of, and holding communion with, the United Church of England and Ireland as there by law established, shall be holden at Graaff Reinet, fourteen days' notice whereof shall be given by the minister of the said church for the time being, by promulgation during divine service, and by notice posted on the doors of the church, or by advertisement in one of the public papers of this colony, for the purpose of electing a vestry; and it shall and may be lawful for the inhabitants as aforesaid, or the greater part, assembled at such meeting, to elect from among themselves any number of persons, not exceeding eight, in manner and subject to the provisions hereinafter mentioned, who, together with the officiating minister for the time being, shall form a vestry, charged with the duties, and invested with the powers hereinafter mentioned.

Annual general meeting for election of a Vestry.

Election of auditors.

2. And be it enacted, that two other persons, not being members of the said vestry, shall likewise be elected at

such meeting as aforesaid, to be auditors of the accounts of said vestry.

Qualification of members of Vestry.

3. And be it enacted, that every male inhabitant householder, being of the age of twenty-one years or upwards, and a member of, and holding communion with, the church aforesaid, and residing at Graaff-Reinet or within the parochial limits thereof, shall be eligible to be a member of the said vestry: Provided always, that no person shall be entitled to vote at such election, or be eligible to be chosen a member of the vestry, or an auditor of accounts thereof, so long as (legal demand having previously been made) any just claim had upon him by the said vestry, as such, shall remain unsatisfied.

List of persons eligible to lie open for inspection.

4. And be it enacted, that a list of all persons eligible, according to the provisions of the foregoing section, shall be prepared by the officiating minister, so long as there are no churchwardens appointed, and when churchwardens shall have been appointed, as is hereinafter provided, then by the minister and churchwardens conjointly, and shall be open for inspection of all persons entitled to vote at the election of the said vestry and auditors, at least fourteen days before any election is to take place.

Elections, how carried on.

5. And be it enacted, that at every such general meeting as aforesaid, the election shall be carried on by lists, duly signed by such inhabitants as aforesaid respectively, and containing the names of the persons for whom they vote to be elected as vestrymen and as auditors.

Appointment of Chairman.

6. And be it enacted, that the officiating minister for the time being shall preside as chairman at the meetings of the said vestry; provided that, in his absence from any such meeting, one of the other members shall be chosen to act as chairman; and in case the votes of the said vestry be equally divided, the chairman, or acting chairman, shall have a casting vote in addition to his own.

Five members a quorum.

7. And be it enacted, that five members of the said vestry, or four members besides the chairman, shall form a quorum, and shall be competent to perform all matters and things which may be done by the vestry, under and by virtue of any of the provisions of this Ordinance.

Rules &c, for management of church.

8. And be it enacted, that it shall and may be lawful for the said vestry, so from time to time constituted and appointed, to frame, adopt, alter, or rescind such rules, orders, and by-laws, as may to them appear expedient for their guidance in the discharge of their duties, and for more effectually executing the provisions of this Ordinance, and also to take such order for the management of the said church as shall to them seem expedient,—provided that the said rules, orders, or by-laws contain no-

thing repugnant to law, or to the tenor of this Ordinance, or to the customs and usages of the united church of England and Ireland, as there by law established.

Abolition of committee.

9. And be it enacted, that the said committee shall, upon the appointment of the said vestry, deliver over to the said vestry all deeds, books, and papers, relating to the church, in their custody or power, and all sums of meney in their possession or control; and the office and duties of the said committee shall thereupon cease and determine.

Vestry to have sole management of revenues.

10. And be it enacted, that the said vestry, as from time to time constituted and elected by such members of the said church as aforesaid, shall and may have and exercise the whole power and rights and duties respecting the said church, and the care and government thereof, and the administration of the funds, rents, and revenues thereof, and all other matters and things relating to the same.

Vestry to compel payments, to make contracts, &c.

11. And be it enacted, that it shall and may be lawful for the said vestry, for the time being, to call in and compel payment of all sums of money which are or shall be at any time hereafter due and payable to their order by virtue of any of the provisions of this Ordinance, and, in their own names, to make and enter into, perform and execute, or compel the performance and execution of all such contracts and agreements, matters and things, as they shall from time to time deem necessary for the good of the church aforesaid.

Actions by vestry, how to be brought.

12. And be it enacted, that it shall and may be lawful for the said vestry, as such, from time to time, to commence and maintain all such suits and actions in any competent court in this colony, as they shall deem necessary in performance of the trust reposed in them, against any person whatsoever; and all such suits and actions shall and may be brought by them in the name of the Vestry of St. James' Church, without specifying the christian or surnames of the members of the vestry, and no action shall abate by reason of the death or removal, or going out of office, of any individual members thereof.

Actions against Vestry, how to be brought.

13. And be it enacted, that all suits or actions, the cause of which shall arise or accrue to any person whatsoever, from or by reason of any contract, or other matter or thing, made or entered into, or performed, by the said vestry, in the execution of the said trust, or shall arise or accrue to any person whatsoever against the said vestry, shall be brought by such person in manner and in name aforesaid, and not against any individual member of the said vestry.

Accounts of Vestry how to be kept and inspected.

14. And be it enacted, that the said vestry shall keep an account, wherein they shall enter money received and paid by them, under and by virtue of the provisions of this Ordinance; which account the auditors, or either of them, may inspect at all reasonable times. And the said account, together with any report of the auditors, or either of them, thereon, shall be laid before the members holding communion with the said church, at the general annual meeting aforesaid, and published, if requisite, for general information.

Churchwardens, appointment and duty.

15. And be it enacted, that the said vestry shall forthwith on their appointment, or as soon as conveniently may be, choose, out of their own number, two persons to be churchwardens, who shall perform and execute all lawful acts, and matters, and things for the good order and decency of behaviour to be kept in the said church by the congregation thereof, and for preserving to all persons their rights in the pews and sittings thereof, and providing the said church (by order and at the charges of the said vestry) with necessary and customary furniture for the performance of divine service, and for keeping the same clean and in proper repair, and for keeping the burial ground attached to the said church in decent order and properly fenced, and for discharging all other duties which usually devolve on churchwardens in the United Church of England and Ireland, so far as the same may be applicable to this colony.

Administration of charitable collections, &c, accounts thereof subject to the same rules as accounts of Vestry.

16. And be it enacted, that the said churchwardens shall keep an exact account of all collections of money made from time to time in the said church, for any charitable or religious purposes connected with the said church or congregation; and the said churchwardens, together with the officiating minister for the time being, shall faithfully administer the same, or see that they be faithfully administered and appropriated, in the manner and for the purposes contemplated and intended by the persons contributing to the same. And the churchwardens' accounts of all such sums as shall be subscribed and collected for charitable purposes, and received in trust by them, in virtue of their office, shall be subject to all the same regulations as the general church fund and accounts of the vestry.

Churchwardens, continuance in office of; —annual nomination of.

17. And be it enacted, that the churchwardens appointed as above shall continue in office until after the next general annual election of the vestry is completed, when they shall deliver up to the said vestry all accounts of such charities as aforesaid, duly audited, together with all vouchers, sums of money, or securities held by them in

virtue of their office; and the vestry shall then proceed to nominate other churchwardens for the ensuing year; provided always, that the churchwardens thus vacating office shall be eligible to be re-elected in case they are continued as members of the vestry.

Vacancies in Vestry how to be filled up.

18. And be it enacted, that in case any member of the vestry shall die, or desire to resign, or shall be removed, or for any other lawful cause shall vacate his office, it shall and may be lawful for the surviving or other members of the said vestry to decide whether a special general meeting shall be called for the purpose of electing another member in the place of the one so dying, or desiring to resign, or being removed, or whether his place shall remain vacant until the next general annual meeting to be holden as aforesaid. Provided always, that in case the members of the said vestry decide, that a special general meeting shall be holden for the purpose aforesaid, the same notice shall be given thereof, and the same proceedings shall be observed thereat, as in case of the general annual meeting is provided.

What pews to be set apart, and for whom,—free sittings.

19. And be it enacted, that there shall be set apart in the said church two free pews, one to be allotted to the use of the minister and the other to that of the churchwardens, and such other pews as the vestry for the time being may deem necessary as free sittings for strangers and poor persons.

Other pews and sittings how rented, and rights of holders thereof.

20. And be it enacted, that all the pews and sittings in the said church, with the exception of those allotted and reserved as aforesaid shall and may be let by the vestry by the year, or for any other shorter period, to any person desiring to take the same, at a rent to be affixed to them respectively by the vestry, and payable at such times and in such manner as shall be appointed by the vestry; and the holder of any pew so rented shall and may possess and occupy the same by himself or his assigns, without hindrance or disturbance by any person whatsoever, until the end of the said term, provided he shall continue to pay the rent affixed to the same, at the times whereon, and in the manner in which the same shall be made payable.

Remedy, if pew rents be in arrear twenty-eight days,

21. And be it enacted, that it shall and may be lawful for the vestry, whenever it shall happen that the rent of any pew or sitting is in arrear and unpaid for the space of twenty-eight days after the same is due and payable, to give notice to the possessor of such pew forthwith to quit and give up possession thereof; and thereupon it shall and may be lawful for the said vestry to re-enter into the possession of the said pew for the purposes of this Ordinance, without any other form or proceeding whatever: Provi-

ded, however, that nothing herein contained shall extend or be construed to deprive the said vestry from recovering the amount of such rent in arrear, by action in any competent court.

Pewbook to be kept.

22. And be it enacted, that the said churchwardens, acting as aforesaid, shall keep a book, to be called the "Pew Book," wherein they shall enter, or cause to be entered, the name of every person applying for either a pew, sitting, or sittings, in the said church, together with the date of such application; and that on any pew, sitting, or sittings becoming vacant, either by death, resignation, removal, or in any other way, or in case of the erection of any new pew or pews, or seats, in any part of the said church, the churchwardens for the time being shall forthwith apprise the applicant whose name shall stand first on the pew book, of the vacancy so caused, or of the new pew, pews, or seat so erected, and shall offer the said pew, seat, or seats to such applicant, on condition that he or she shall covenant and engage to pay the rent of the same, affixed and made payable as hereinbefore mentioned; and that the said pew, sitting, or sittings, so becoming vacant, or the said pew or pews, seat or seats, so newly erected, shall not be offered to any person whatsoever, whose application for the same, or any portion of the same, shall bear a later date, until it shall have been declined by every applicant preceding such person on the pew book.

Burials not allowed within the church, but in the burial ground.

23. And be it enacted, that no burial shall take place within, or under, the said church; but the burials of all persons according to the rites and ceremonies of the Church of England shall take place in the burial ground, consecrated and allotted, or which may hereafter be consecrated and allotted, to the said church for that purpose.

Monuments, and vaults fees payable for the same.

24 And be it enacted, that it shall and may be lawful for the officiating minister and churchwardens for the time being, to permit any monument to be erected or placed in such convenient parts of the said church, or of the enclosed ground about the same, or in the burial ground belonging thereto, or vaults to be dug and made in the said burial ground, upon payment to the fund of the said church for such permission, of such reasonable fee as shall be affixed by the said vestry for such permission, according to the term thereof.

Rights of owner of monument or vault.

25. And be it enacted, that it shall and may be lawful for any person or persons, erecting or placing any monument in the said church, or digging, or making any vaults in the said burial ground, by and with such permission as

aforesaid, to have, maintain, and keep up such monument or vault, according to the terms of such permission, to and for the sole and separate use of the said person or persons, and his or their heirs for ever: Provided always, that in case any such monument as aforesaid is suffered to fall into decay, and the person or persons to whom the said monument appertains neglect to repair the same, it shall and may be lawful, after a general notice of such intention, to remove the same.

Public Ordinance.

26. And be it enacted that this Ordinance shall be deemed and taken to be a public Ordinance, and shall be judicially taken notice of by all the judges, magistrates, and others, without being specially pleaded, and shall be of full force and effect after the promulgation thereof.

No 9,—1846.] ORDINANCE [Feb. 28, 1846.

For the better Preservation of the Public Roads, and the Prevention of Accidents and Injuries thereon

Proclamation of 23d of June 1809, and Ordinance No. 79, 1830, repealed.

WHEREAS the proclamation of His Excellency the right honorable Du Pré, Earl of Caledon, Viscount Alexander and Baron Caledon of Caledon, &c. &c, &c., the then Governor of this colony, bearing date the 23d of June 1809, for providing for the safety of travellers, and other the like purposes, has become, in some respects, insufficient to secure the ends intended; and it is therefore expedient to repeal the same and to make other provisions in its room and stead; And whereas the substance of the Ordinance No. 79 of 1830, entituled "Ordinance for preventing the practice of riding or driving carelessly or furiously on the frequented parts of the public roads of this colony," may, with avantage, be incorporated in the provisions of this Ordinance, and it is, therefore, expedient to repeal the same: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that the proclamation aforesaid, and the Ordinance aforesaid, shall respectively be repealed; and the same are hereby repealed accordingly.

Name and District of residence of owner, to be painted on every wagon, &c.

2. And be it enacted, that the owner of every wagon or cart shall paint, or cause to be painted, in one or more straight line or lines, upon some conspicuous part on the right or off-side of his wagon or cart, or upon some board or plate firmly affixed to such side, the christian name and surname by which he is usually called and distinguished, together with the name of the district in which he resides, in legible letters, not less than one inch in

height: and shall continue the same thereupon so long as such wagon or cart shall be used upon any public road in this colony; and every owner of any wagon or cart who shall use, or allow the same to be used, on any public road, without having his name and district of residence painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false name or district of residence, shall, upon conviction, forfeit any sum not exceeding forty shillings. Provided, that nothing in this section contained shall be construed to extend to any wagon or cart on springs, and used solely for the conveyance of passengers or other persons.

Penalty for neglect.

3. And be it enacted, that the driver of any wagon, cart, or other carriage, which shall, by the negligence or misbehaviour of such driver, cause any hurt or damage to any person or cattle, or to any other vehicle, or to any goods conveyed in any other vehicle, passing or being upon any public road; or of any wagon, cart, or other carriage, which, when meeting, or being followed upon any public road by, any other wagon, cart, or other carriage, shall not, together with the cattle drawing the same, keep upon the left or near side of the road; or of any wagon, cart, or other carriage, which shall wantonly or unnecessarily prevent, hinder, or interrupt the free and rightful passage of any other wagon, cart, or carriage; or of any wagon, cart, or other carriage, which, upon any public road within four miles of Cape Town, or in any town or village, for which town or village no municipal regulations for the prevention of negligent, careless, or furious driving shall be provided, or on any public road within the distance of two miles of any town or village other than Cape Town, shall drive or be driven so negligently, carelessly, or furiously, as to injure or endanger the person or property of any other person; or of any wagon, cart, or other carriage, which shall, having the oxen or other cattle used for drawing the same unyoked or detached therefrom, be left (unless by reason of accident or other unavoidable cause) standing upon any part of the road aforesaid, between Cape Town and Simon's Town, or any part of the new road aforesaid, between Cape Town and its terminus at the Eerste River; or of any wagon, cart, or other carriage, the oxen or other cattle belonging to which, or any of them, shall be suffered, while attached thereto, to lie down to rest upon any part of either of the two last-mentioned roads respectively, shall, upon conviction, forfeit any sum not exceeding forty shillings. Provided always, that if the owner of any such wagon, cart, or other carriage

Misconduct of drivers defined.

Penalty.

shall be in or with the same, when any contravention of this section shall be committed, such owner, and not the driver, shall incur and be liable to the said forfeiture.

Oxen to be led.

4. And be it enacted, that in case any wagon or cart, being drawn by any number of oxen more than two, shall be in motion upon any part of the public road between Cape Town and Simon's Town, lying between Cape Town and the 8th mile stone upon the said road, or upon any part of the new road over the Cape Downs, leading to or towards the interior, lying between Cape Town and the 4th mile stone from Cape Town upon the said road, or upon any part of the road from Cape Town to and through the municipality of Green Point, as far as where the said road intersects the limit of the said municipality farthest from Cape Town, without having some person actually leading, in the usual manner, the foremost pair of oxen; or in case any such wagon or cart, being upon any part of the road first in this section mentioned, beyond the 8th mile stone aforesaid, or upon part of the road secondly in this section mentioned, beyond the 4th mile stone aforesaid, which shall not, while approaching closely to and passing any other wagon, cart, or carriage followed, or while being passed by any other wagon, cart, or carriage, that is proceeding in the same direction, have some person actually leading the foremost pair of oxen, any person of the age of 16 years or upwards employed and engaged to lead the said oxen, and who shall be found wilfully or negligently not leading the same, shall upon conviction forfeit any sum not exceeding forty shillings.

Penalty.

Penalty on owner who shall not have employed a leader.

5. And be it enacted, that the owner of every such wagon or cart, as in the last preceding section mentioned, which shall be in motion aforesaid, without such leading as aforesaid, who shall not have employed and engaged some person, of the age of 16 years and upwards, to act as leader in the usual manner, shall, upon conviction, forfeit any sum not exceeding forty shillings. Provided also, that when and as often as no person of the age last mentioned shall be discovered with or near such wagon or cart, who shall confess himself, or shall be otherwise shown to be, employed and engaged to act as such leader, it shall be deemed and taken, *prima facie*, that no such person has been so employed or engaged, and the owner aforesaid shall be liable, unless he shall prove that some such leader as aforesaid was actually engaged and employed, in which case he shall be acquitted.

How penalties to be recovered.

6. And be it enacted, that all fines, penalties, and forfeitures, imposed by this Ordinance, shall be recoverable in the court of any resident magstrate without regard

to the district in which the same shall have been incurred; and in case any offender shall not, upon conviction, pay the sum awarded, such magistrate is hereby authorised to commit him to prison, there to be kept to hard labour, should the said magistrate so order, for any term not exceeding six weeks, unless the sum awarded shall be sooner paid or recovered. Provided always, that it shall be competent for such magistrate, notwithstanding such committal to prison as aforesaid, to authorise, by warrant under his hand, the amount adjudged to be forfeited (together with such costs, if any, as may be awarded under and by virtue of the 41st section of this Ordinance), to be levied by distress and sale of the goods of the offender. And provided also, that when and as often as any of the goods of the offender shall be within any district other than that of the convicting magistrate, the resident magistrate of the district in which such goods shall be, shall indorse any such warrant as aforesaid, after which it shall and may be executed in like manner as if the same had been issued by the magistrate so indorsing it. And provided also, that nothing in this section contained shall be construed so as to affect or impair the force and validity of the 18th, or 35th, or of the concluding clause of the 30th section of this Ordinance. And provided also, that the keeper of every public prison shall receive into his charge and custody the body of any person committed by any resident magistrate, whether of the district in which such prison is situate or not, to be imprisoned under the provisions of this Ordinance for any contravention of the same.

Road Magistrates to be created.

7. And whereas it is expedient, in order to prevent delay, inconvenience, and expense, that magistrates should be created, having, in regard to such fines, penalties, and forfeitures as aforesaid, a certain concurrent jurisdiction with such resident magistrates as aforesaid: Be it therefore enacted, that it shall and may be lawful for the Governor of this colony, from time to time, to nominate and appoint, in such places as he shall deem expedient, so many fit and proper persons as he shall select, to be called and termed road magistrates, who shall severally and respectively have jurisdiction to try and determine all cases of offences alleged to have been committed in contravention of any of the provisions of the 2d, 3d, and 4th sections of this Ordinance, and all other offences created by this Ordinance, in regard to which such road magistrates shall be expressly invested with jurisdiction, and to impose all fines, penalties, and forfeitures consequent thereon, and, if it need be, award imprisonment, in as full

Jurisdiction.

and ample a manner as is hereinbefore provided, in regard to the court of resident magistrates.

Oaths to be take by such Road Magistrates.

8, And be it enacted, that every such road magistrate shall, before acting as such, take the oath of allegiance and the oath of office, in the first schedule hereunto annexed set forth, which oaths respectively any resident magistrate or justice of the peace is hereby empowered to administer.

Road Magistrates to decide summarily.

9. And be it enacted, that every such road magistrate as aforesaid shall act in, and exercise, the jurisdiction aforesaid, in a purely summary manner, that is to say, when and as often as any person or persons shall, under and by virtue of the provisions in that behalf hereafter contained, bring or cause to be brought before such road magistrate, at any place where he shall happen to be, any wagon, cart, or other carriage, or owner or driver thereof, and shall complain that any offence against the provisions of the 2d or 3d sections of this Ordinance has been by it, or by means of it, committed, such road magistrate shall record such complaint, and shall forthwith hear and determine the same.

Road Magistrate to keep a Record Book.

10. And be it enacted, that every complaint shall, if possible before, but at all events as soon as may be after, the determination of the case, be recorded by the road magistrate, by entering in separate columns, in a record book to be kept for that purpose, the name and residence of the person complaining, the name and residence, if known, of the owner of the wagon, cart, or other carriage, by or by means of which the alleged offence has been committed, the description of such alleged offence, and the day of the hearing of the same.

Judgment to be recorded.

11. And be it enacted, that every such road magistrate as aforesaid shall also record in a separate column in the said record book the judgment given by him in regard to any such complaint, as soon as the same shall have been pronounced.

Manner of execution when owner convicted.

12. And be it enacted, that in every case in which any such road magistrate shall see cause, in regard to any such complaint, to convict the party offending, being the owner of the wagon, cart, or other carriage, it shall and may be lawful for him, in case the fine, penalty, or forfeiture imposed shall not be paid forthwith, or in case sufficient security for the payment of the same shall not be given, to issue a warrant under his hand, directed to any person whom he shall name therein, authorizing such person to seize and attach any property, matter, or thing, being in or upon such wagon, cart, or other carriage, sufficient to satisfy the emergency of the warrant, or failing such, to seize and

attach so many of the oxen or other cattle belonging to, or drawing the wagon, cart, or other carriage, in regard to which such conviction shall have been had, as may be deemed sufficient to satisfy the exigency of the warrant, and which number shall be specified in such warrant,

Form of warrant.

13. And be it enacted, that every such warrant shall, in substance and effect, be agreeable to the form in the second schedule hereunto annexed mentioned and set forth.

Manner of proceeding when oxen taken in execution.

14. And be it enacted, that when and as often as any oxen or other cattle shall be seized and attached under any such warrant as aforesaid, they shall, by the person named in the said warrant, be forwarded to the nearest public pound, the keeper of which is hereby required to receive the same, and at, or as soon as may be after, the expiration of ten days from the day of such seizure and attachment, shall be publicly sold for ready money by the keeper of such pound (who shall not require any licence as an auctioneer, in order to sell the same), to the highest bidder; provided, that a notice of such sale shall be affixed by such pound-keeper, at such pound and such other place if any, as such road magistrate may order, three days at least before the sale. And provided also, that if the amount mentioned in any such warrant, together with the reasonable expenses of seizing and sending such oxen or other cattle to the pound, and the legal pound charges, be sooner paid and satisfied to the road magistrate convicting, to be by him applied according to law, the said magistrate shall grant his order for the restoration of the said oxen or other cattle, which shall be restored accordingly.

Application of proceeds of the sale of such oxen

15. And be it enacted, that the keeper of every pound by whom any such oxen or cattle shall be sold as aforesaid shall forthwith pay and hand over to the road magistrate convicting, or any person by him authorized to receive the same, the amount which shall have been realized by such sale: deducting only his legal and usual charges in regard to similar cattle impounded for the same time for other causes; and if, after the payment of such charges, and the reasonable expenses of the person mentioned in such warrant as aforesaid, and the amount of the fine, penalty, and forfeiture imposed, any surplus remain, the same shall be paid, upon demand, to the owner of the oxen, or other cattle seized and sold.

Manner of selling property other than cattle seized in execution.

16. And be it enacted, that when and as often as any property, matter, or thing other than cattle, shall be seized and attached under and by virtue of the provisions in that behalf in the 12th section of this Ordinance contained,

the same shall be sold publicly and for ready money, by the person to whom the warrant aforesaid shall be directed, or by some other person approved of by the road magistrate issuing the same, to the highest bidder, at such place as such magistrate shall direct for the sale thereof. Provided that a notice of every such sale shall be affixed, at such place or place as the said magistrate shall deem requisite, seven days at least before the day appointed for such sale, which shall not be earlier than the fourteenth day from the day of the seizure. And provided also, that the person conducting such sale shall pay and hand over to the road magistrate, to be applied as in and by the 42d section of this Ordinance is directed, the whole amount of the proceeds realised thereby, less such fee or charge not exceeding 7s. 6d. as the said magistrate shall deem reasonable and allow ; and any surplus shall, upon demand, be paid to the person convicted. And provided also, that if such last mentioned person shall pay or cause to be paid, at any time before such sale as aforesaid, the amount of the fine imposed, together with a fee of 3s. 6d. for the person who shall have made seizure, the property seized shall be restored.

When driver convicted and fine unpaid, Magistrate may commit the offender.

17. And be it enacted, that in every case, in which the driver of any wagon, cart, or carriage, shall be convicted by any road magistrate, of contravening any of the provisions of the 3d section of this Ordinance, such magistrate, in case the fine imposed shall not be forthwith paid, and it shall appear that the offender may be committed to prison, without thereby depriving the wagon, cart, or other carriage, of which he shall be in charge, of a person necessary for the safe conduct of the same, shall forthwith commit such offender to prison ; and his warrant for that purpose shall, in substance and effect, be agreeable to the form in the 3d Schedule of this Ordinance mentioned and set forth.

Course of proceeding when immediate committal would leave property of master unprotected.

18. And be it enacted, that in every case in which it shall appear that to commit to prison forthwith any driver convicted as in the last preceding section mentioned would have the effect of depriving the wagon, cart or carriage, of which he was in charge, of a person necessary for the safe conduct of the same, the magistrate convicting (whether a resident magistrate or a road magistrate) shall, instead of forthwith committing the offender, cause to be seized and detained in some safe place some sufficient property, matter, or thing, in, upon, or belonging to such wagon, cart, or carriage, by way of caution or security for the payment of the fine imposed, or otherwise for the re-apppearance of such offender, at some reasonable time

to be fixed by the said magistrate for such payment or reappearance. And when, and as often as, any property, matter, or thing shall be seized and detained, under the provisions of this section, the magistrate causing such seizure or detention shall deliver to the person convicted a certificate which shall, in substance and effect, be agreeable to the form in the 4th Schedule hereunto annexed, and shall allow him to depart. And in case the fine imposed shall not be paid, or failing that, in case the offender shall not again appear on the day limited for such purpose in the said certificate, the property or thing seized and detained shall be treated and considered as if seized and attached under a warrant of the magistrate granting such certificate against the goods and chattels of the offender, and shall be sold, in case such magistrate be a resident magistrate, by the messenger in manner and form as by the rules of his court in that behalf provided; and in case such magistrate be a road magistrate, by some person by him appointed for that purpose, in manner and form as is hereinbefore in the 16th section of this Ordinance provided. Provided always, that in case the fine imposed be paid, or the offender again appear on or before the day, in and by the said certificate limited for that purpose, the property, article, matter, or thing detained shall be restored.

Power of master in the case in preceding section mentioned.

19. And be it enacted, that the owner of any property, matter or thing seized or detained under the circumstances in the last preceding section mentioned, shall be authorized either to pay the fine imposed, for and on account of the offender, and to retain or recover the amount thereof from such offender, or otherwise to convey such offender to the magistrate granting the certificate aforesaid, so as to produce such offender at any time before the expiration of the day limited in such certificate for that purpose. And whenever any such offender shall be so produced before any resident magistrate or road magistrate, and shall not pay the fine imposed, such resident magistrate or road magistrate shall forthwith commit him to prison; and the warrant to be issued by the resident magistrate for that purpose shall be, in substance and effect, agreeable to the form in the 3d Schedule of this Ordinance mentioned and set forth.

Persons seeing contraventions of this Ordinance committed may require offenders to proceed to a Magistrate.

20. And be it enacted, that it shall and may be lawful for any person who shall witness or discover any contravention of the provisions of the 2d, 3d, or 4th sections of this Ordinance, and for any other person whom he shall desire to assist him, and shall be willing so to do, to require

and, if necessary and practicable, use all force necessary to compel the owner, driver, or other person or persons in charge of the wagon, cart, or other carriage by, or by means of which, such contravention shall have been committed, forthwith to proceed, with the wagon, cart, or other carriage in question, and the oxen or other cattle belonging thereto, to the residence or place of abode of whatever resident magistrate, or road magistrate, shall be or reside, or be found, nearest to the place where such wagon, cart, or other carriage shall be when required to proceed as aforesaid, and such resident magistrate or road magistrate shall, as soon as may be, proceed to hear and determine the subject matter of the complaint, and shall detain the wagon, cart, or other carriage in question to abide the issue of the investigation of the case. Provided, that it shall not be lawful to require any such owner, driver, or other person as aforesaid, to proceed to any magistrate whose residence shall be distant three miles or upwards.

But not to any Magistrate more distant than 3 miles.

Course which may be pursued when complainant cannot carry the offender before a Magistrate.

21. And be it enacted, that, when and as often as any person witnessing or discovering any such contravention as aforesaid shall, by reason of distance, or other impediment, find it impossible, or deem it inexpedient, to require any such wagon, cart or other carriage, to proceed to any resident magistrate or road magistrate, and in every case in which the residence of the nearest resident magistrate or road magistrate, shall be distant three miles or upwards from the place at which any such contravention as aforesaid shall be witnessed or discovered, and there shall be nearer than the nearest resident magistrate or road magistrate any justice of the peace, field-cornet, or gaoler, the person so witnessing or discovering any such contravention as aforesaid may require and compel such wagon, cart, or other carriage to proceed to whoever of the last-mentioned persons can be most conveniently reached ; and such justice of the peace, field-cornet, or gaoler is hereby authorised and empowered, at his discretion, either to detain the said wagon, cart, or other carriage, with the oxen, or other cattle thereto belonging, for any period not exceeding twelve hours, in order that, during that period, the case concerning it or them may be disposed of by some resident magistrate or road magistrate, should it be practicable so to do, or such justice of the peace, field-cornet, or gaoler may, in case the owner of such wagon, cart, or other carriage shall be in charge of, or with, the same, take, but without fee or reward, and as near as may be in the form in the 5th schedule to this Ordinance set forth, the bond, obligation, or recognizance of such owner, with or without

sureties, as may be thought fit, conditioned for the appearance of such owner before any resident magistrate whom the said owner and the person complaining shall agree to have inserted, and in case they shall not so agree then before the resident magistrate, whom the justice of the peace, field-cornet, gaoler or constable shall, under the circumstances, deem the most convenient, upon some convenient day to be, after consulting such owner and person complaining, fixed by the justice of the peace, field-cornet or gaoler, and which day shall be mentioned in such bond, obligation or recognizance, then to answer the charge to to be preferred against him; and upon such owner entering into such bond, obligation or recognizance, the wagon, cart, or other carriage in question, and the oxen used for drawing the same, shall be allowed to depart. But if, in any case, the owner of such wagon, cart, or other carriage, brought, as aforesaid, to any justice of the peace, field-cornet, or gaoler, should not, in person, be in charge of or present with the same, then in place and stead of taking such bond, obligation, or recognizance as aforesaid, such justice of the peace, field cornet, or gaoler, shall and may detain the alleged offender, to answer the charge against him, provided his so doing would not have the effect of depriving any wagon, cart, or other carriage, of a person necessary for the safe couduct of the same; but if such detention would have such effect, such justice of the peace, field-cornet, or gaoler shall and may seize and detain, and, if he shall think fit, forward to and place in the nearest public pound, such a number of the oxen or other cattle belonging to such wagon, cart, or other carriage, as he shall deem sufficient to meet and satisfy any fine, penalty, or forfeiture which may be imposed for or in respect of the charge preferred; or should it be practicable, shall seize and detain instead, some property, matter, or thing, in, upon, or belonging to such wagon, cart, or other carriage, and shall then permit and suffer such wagon, cart, or other carriage to depart, having first delivered a written statement to the owner or person in charge thereof of the day on which the case will come on to be investigated in and by the court of the resident magistrate.

Complainants may be bound over to appear and give evidence.

22. And be it enacted, that in every case in which any wagon, cart, or other carriage shall be brought as aforesaid to any justice of the peace, field-cornet, or gaoler, such justice of the peace, field-cornet, gaoler, or constable shall take down in writing the name and residence of every person bringing the same, or causing the same to be brought, and may require every such person to enter into a bond, obligation, or recognizance, with or without

sureties, and as near as may be in the form in the 6th schedule to this Ordinance set forth, to appear and give evidence in the court of the resident magistrate; or in case such justice of the peace, field-cornet, or gaoler, shall propose to detain the waggon, cart, or other carriage, with the oxen or other cattle, as aforesaid, in order that the case may be brought before any road magistrate, then before such road magistrate, touching and concerning such alleged offence; and in case no sufficient security, either personally or by sureties, shall, when required, be given by some person or persons so to appear and give evidence, the wagon, cart, or other carriage, shall, unless the matter complained of in regard thereto shall be apparent upon the view thereof, and the justice of the peace, field-cornet, or gaoler, shall himself think fit to prosecute, be permitted to pursue its journey.

When complaint groundless and vexatious, complainant may be detained for prosecution if the person complained against will give security to appear, and give evidence.

23. And be it enacted, that if in any case in which any wagon, cart, or other carriage, shall be brought as aforesaid to any justice of the peace, field-cornet, or gaoler, it shall appear to such justice of the peace, field-cornet, or gaoler, that the complaint made is groundless and vexatious, the person preferring the same, and neglecting to give sufficient security, personally or by sureties, to appear and give evidence as aforesaid, may, upon the request of the owner or person in charge of the wagon, cart, or other carriage in question, be detained in custody until he shall be brought up before the court of the resident magistrate, such owner, or person in charge, in his turn giving security to appear and give evidence in the said court, or in person abiding in order so to do, when the said person or persons shall be brought before the same, which shall be as soon as reasonably may be.

Penalty for groundless and vexatious complaint.

24. And be it enacted, that any person, who shall to any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler, prefer, by virtue, or under pretext of this Ordinance, any groundless and vexatious complaint against any other person, or any wagon, cart, or other carriage, shall, in addition to any civil action to which he may render himself liable, forfeit upon conviction any sum not exceeding forty shillings.

Bonds, &c., to appear before any Resident Magistrate to be forwarded to him.

25. And be it enacted, that in every case in which any justice of the peace, field-cornet, or gaoler, shall take from any such owner as aforesaid (whether resident in the district in which any alleged offence shall have been witnessed or discovered, or not) any such bond, obligation, or recognizance as aforesaid, he shall forthwith forward the same to the resident magistrate mentioned therein, together with the name and residence of every person complaining as afore-

said, as also any bond, obligation, or recognizance which may have been entered into by any such lastmentioned person to appear and give his evidence in the court of the resident magistrate at the time fixed in the bond, obligation, or recognizance of such owner as aforesaid, for the hearing of the case.

Report of cattle or property taken in security to be made to Resident Magistrate.

26. And be it enacted, that in every case in which any oxen or other cattle, or any property, matter, or thing, shall have been detained or impounded, under and by virtue of the provisions in that behalf hereinbefore set forth, by any justice of the peace, field-cornet, or gaoler, such justice of the peace, field cornet, or gaoler shall transmit forthwith to the resident magistrate a report of what has been done in that behalf, mentioning the day named by him to the parties for the hearing of the case, together with the name and residence of, and the other matters and things concerning, every person complaining, in manner and form as in the last clause of the last preceding section mentioned and set forth.

Resident Magistrate receiving bond, &c., or such report as aforesaid, to sit for hearing of the case.

27. And be it enacted, that it shall be the duty of every resident magistrate to whom any such bond, obligation, or recognizance, as aforesaid, or any such report as in the last preceding section mentioned, shall be transmitted by any justice of the peace, field cornet, or gaoler, to sit for the hearing of the case to which it relates, upon the day which has been specified for the hearing of the same, and thereupon, in the presence of the parties interested, should both attend, or in the absence of such of them, if any, as may make default, to pronounce such judgment as shall to justice appertain.

Property taken as security for appearance, may on conviction be excussed in satisfaction of judgment.

28. And be it enacted, that if the court of the resident magistrate shall see cause to convict any owner in any case in which it shall have been reported as aforesaid that any oxen or other cattle, or any property, matter, or thing, seized and detained, have been detained and impounded as aforesaid, by any justice of the peace, field-cornet, or gaoler, the said oxen or other cattle shall and may be excussed in satisfaction of the judgment. Provided always, that the pound fees or charges due and payable thereon shall be first deducted from the amount for which any such oxen or other cattle shall be sold; and that there shall next be deducted the expense of sending the same to pound by such justice of the peace; and that in case there shall then remain any surplus after deducting the fine, penalty, or forfeiture imposed, such surplus shall be paid over to such owner.

Manner of proceeding when master's property

29. And be it enacted, that if the court of the resident magistrate shall see cause to convict in his absence any

detained as security for servant's re-appearance.

driver in any case in which any oxen, cattle, property, article, matter or thing, shall have been seized, detained, or impounded, the same shall and may be executed in satisfaction of the judgment. Provided always, that if such driver duly appear, the thing seized, detained, or impounded, shall be forthwith restored to the owner; and provided, that it shall be competent for such owner, at any time before the actual sale of the thing so seized, detained, or impounded, to redeem the same by payment, for and on account of the offenders, of the fine imposed, with reasonable charges to be assessed by the said magistrate; and provided, that if such owner shall produce to such magistrate at any time before such sale aforesaid, the convicted party (as he is hereby authorized to do), and shall pay such reasonable charges as aforesaid, the thing seized, detained or impounded shall be forthwith restored.

Offenders need not be seized at the moment; but may be prosecuted by summons.

30. And be it enacted, that nothing in this Ordinance contained shall be construed so as to make it imperative or necessary for any person witnessing or discovering any contravention of this Ordinance, to require the wagon, cart, or other carriage, by or by means of which such contravention shall have taken place, to proceed, at once to any resident magistrate, road magistrate, justice of the peace, field-cornet, gaoler, or constable as aforesaid, but that such person may, should he so think fit, prosecute, or cause to be prosecuted, the party offending, before any court of resident magistate which such person shall select. Provided, however, that no summons shall be issued by any such court in any case, until such person shall have deposed on oath to the fact or facts charged to be, or to have been, such a contravention as aforesaid; and provided also that no person shall be summoned to appear before any such court, other than that of the district in which he resides, except such court shall be appointed to be holden within the distance of 20 miles of such residence.

No man to be summoned by any court distant 20 miles or more from his residence.

When party summoned shall not appear, judgment may be pronounced in default.

31. Any be it enacted, that in every case in which any person shall have been summoned to appear before any court of resident magistrate, being that of the district in which he resides, or some other such court to be held within 20 miles of his residence, to answer to the charge of contravening any of the provisions of this Ordinance, and such person shall not appear upon the day appointed for that purpose, then the said court, upon being satisfied by the return of the messenger of such court endorsed upon the summons, or other credible evidence on oath, that the said summons was duly served,

may either proceed to hear the case in the absence of the person summoned, and give final judgment, and, if necessary, issue execution thereupon; or, in case it should seem more expedient, the resident magistrate may issue his warrant for the apprehension of the person so making default, in manner and form as is by law provided in regard to a person neglecting to appear to answer any criminal charge. Provided, however, that when and as often as any case shall be heard in the absence of the defendant as aforesaid, and such person shall be convicted, process shall, in the first instance, issue only against his goods, and not, either directly or alternatively, against his person; and provided also, that if it shall afterwards be made to appear that no goods have been found sufficient to satisfy the exigency of the writ or warrant of execution, it shall and may be lawful for the court having cognizance of the case, then to issue a warrant against the defendant, for committing him to the prison nearest to his residence, in manner and form as such court might have done forthwith, in case such defendant had duly appeared, or been apprehended and brought before the same.

Execution in such case; how to issue.

32. And be it enacted, that every sentence or judgment of any resident magistrate or road magistrate, given or pronounced in any case of alleged contravention of any the provisions of this Ordinance, shall be final and conclusive, and shall not be subject to be brought by way of appeal or review before any other court, anything in the charter of justice, or any other law or ordinance, to the contrary notwithstanding.

Sentences not subject to review or appeal.

33. And be it enacted, that if any person being in charge of any wagon, cart, or other carriage, whether the owner thereof or not, shall, in any case in which he shall be required to proceed to any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler, under and by virtue of either the 20th or 21st sections of this Ordinance, resist or refuse so doing, or make any undue or unnecessary delay in so doing, such person shall forfeit, upon conviction, any sum not exceeding five pounds. Provided always, that the said forfeiture shall in no case attach or be inflicted except where it shall be proved that some one or more of the provisions of the 2nd, 3rd, or 4th sections of this Ordinance were actually contravened in the view of the person requiring the wagon, cart, or other carriage contravening the same to proceed as aforesaid.

Persons refusing to proceed to Magistrate, &c., when required, subject to a penalty.

34. And be it enacted, that if any person shall, whether by day or night, kindle, place, or have any fire upon the ground upon any part or within 20 yards on either side of

Penalty for kindling fires upon certain roads

the public road aforesaid, from Cape Town to Simon's Town, or of the new hard road aforesaid, from Cape Town to its terminus at the Eerste River, or of the public road from Cape Town, to and through the municipality of Green Point; such person shall, upon conviction, forfeit any sum not exceeding two pounds,—and it shall and may be lawful for any person finding any such fire forthwith to extinguish the same, or cause the same to be extinguished. Provided also, that it shall and may be lawful for His Excellency the Governor, by any proclamation or proclamations to be by him, from time to time, issued in that behalf, to extend the provisions of this section to any other public road or part thereof.

Parties so offending may be arrested without warrant.

35. And be it enacted, that it shall and may be lawful for any person in whose presence any such offence as is in the last preceding section mentioned shall be committed, to apprehend, without warrant, the person offending, and to deliver him to any resident magistrate, road magistrate, field-cornet, constable, or peace officer, who shall keep him in safe custody, and with all reasonable despatch convey him, with the witness or witnesses, before the nearest resident magistrate, or road magistrate (which road magistrate shall have, in regard to the said offence, the same jurisdiction as a resident magistrate), to be dealt with according to law. Provided always, that if in any case the person about to be apprehended as aforesaid shall be in actual charge of, or belong to, any wagon, cart, or other carriage, the person apprehending shall, unless there shall be, on the spot, some other person ready and willing, with the consent of the person about to be apprehended, to take charge of such wagon, cart, or other carriage, cause the offender, or some other person, to conduct the said wagon, cart, or other carriage to such resident magistrate, road magistrate, or field-cornet, or to some public pound or police station, there to be kept for the owner, by whom it may at any time, be taken possession of; such owner, however, being bound before receiving possession thereof to pay and satisfy all reasonable charges and expenses attendant upon the keeping of the same, and of the oxen or other cattle belonging thereto; and provided also that the warrant of committal by any road magistrate for the offence in the last preceding section mentioned shall, in substance and effect, be agreeable to the form in the 3d schedule hereunto annexed set forth; or such resident magistrate or road magistrate may, in case it shall appear more conducive to the interest of the owner of such wagon, cart, or carriage, proceed, in manner and form as in the 18th section is provided, to seize and detain some property

or such matter or thing, and allow the said offender to depart; and thereupon, all and singular the provisions of the said 18th and 19th sections of this Ordinance shall be applicable and be applied as fully as if the same were here again repeated.

By whom expenses of taking charge of wagons, &c. are to be paid.

36. And be it enacted, that the reasonable charges and expenses in the last preceding section mentioned shall be and constitute a debt due by and recoverable from the owner of the wagon, cart, or other carriage, in regard to which, or the oxen or other cattle belonging to which, the same shall have been incurred; and in case such owner shall not himself be a party offending, such charges and expenses shall be by him recoverable over from the offender. Provided always, that in case of any dispute about the amount of any charges or expenses claimed under and virtue of the last preceding or of the 14th, 15th, 28th, or 40th sections of this Ordinance, and of which the amount shall not be ascertained by law, such dispute shall be settled by the decision of any resident magistrate or road magistrate.

Owner of wagon, &c. to be deemed owner of oxen, &c.

37. And be it enacted, that in all cases, the oxen or other cattle drawing or belonging to any wagon, cart, or other carriage, which shall, under the provisions of the 20th or 21st sections of this Ordinance, be brought to or before any resident magistrate, road magistrate, justice of the peace, field-cornet, or gaoler, shall be deemed to belong to the owner of such wagon, cart, or other carriage, and shall be liable to be seized and sold in satisfaction of any fine, penalty, or forfeiture incurred by such owner.

Summons—who to be deemed owners for this purpose.

38. And be it enacted, that when and as often as it shall be necessary to proceed by summons from the resident magistrate's court, in regard to any alleged contravention, by or by means of any wagon, cart, or other carriage, for which contravention the owner is hereinbefore declared to be liable, the several and respective persons following shall, in the several and respective cases following, be deemed to be, for the purpose of incurring any fine, penalty, or forfeiture, under the provisions of this Ordinance, but not otherwise, such owners, that is to say,—1st, the person whose name shall at the time of the alleged contravention be painted upon any wagon, cart, or other carriage, as the owner thereof, shall be deemed to be such owner and as such responsible, unless it shall be made to appear to the court that his name was so upon the said wagon, cart, or other carriage, without his knowledge or consent;—2d, the person having the right of property in any wagon, cart, or other such carriage, which ought, by the 2d section of this Ordinance, to have

the name of the owner legibly painted thereon, and which either has not any name so painted, or has so painted the name of some person not being the person having such right of property, without the knowledge or consent of such person, shall be deemed to be the owner and as such responsible;—3d., the person having the right of property in any carriage of a species or description in regard to which the painting thereupon of the owner's name is not hereinbefore enjoined, shall be deemed to be the owner, should such person be present in or with such carriage at the time of any contravention complained of, or should such carriage be then under the care and management of any person, as his servant or agent; but in every other case the owner of any such last mentioned carriage shall be deemed to be the person by whom, or by whose servant or agent, the same shall be driven or conducted at the time of any such contravention as aforesaid. Provided always, that nothing herein contained shall be construed to extend so as to enable the messenger to attach, in order to satisfy any fine, penalty, or forfeiture, imposed upon any person, as such owner as aforesaid, anything except what would, independently of this Ordinance, be the property of such person.

Furious driving, &c.—Penalty for injury.

39. And be it enacted, that any person who, upon any road or in any place in which negligent, careless, or furious driving is hereinbefore by the 3d section of this Ordinance made punishable as therein mentioned, shall ride so negligently, carelessly, or furiously, as to injure or endanger the person or property of any other person, shall, upon conviction, forfeit any sum not exceding forty shillings.

Offender may be apprehended without warrant.

40. And be it enacted, that every person offending against the provisions of the last preceding section, may be apprehended without warrant, in order to be brought before the nearest resident magistrate or road magistrate (which road magistrate shall have, in regard to the said offence, the same jurisdiction as a resident magistrate), in like manner and form as is by the 35th section of this Ordinance provided in regard to the offending person therein mentioned. Provided also, that the horse or other animal upon which such person so offending as aforesaid shall then be riding may be detained and conducted to the magistrate aforesaid, by the person apprehending such person, and such horse may, for the purpose of satisfying or making good the fine, penalty, or forfeiture incurred by any such person, be deemed to be the property of the offender, and be dealt with as such. And provided, further, that when and as often as any such horse shall be seized and attached, under

Horse, &c., to be deemed property of offender.

the warrant of any road magistrate, to satisfy the sentence of any such magistrate, the person seizing and attaching the same, may place such horse at livery, instead of sending him to the public pound, in which case he shall give immediate notice to the messenger of the court of the resident magistrate of the district, in which such horse shall be detained, who shall proceed in regard to the sale thereof, precisely as if such horse had been seized and attached by himself, under and by virtue of a warrant of the said resident magistrate. Provided always, that every such horse shall be restored, upon the payment of the fine, penalty, or forfeiture imposed, together with the reasonable charges and expenses of the horse's keep, as also of the person who seized and attached the same, under and by virtue of the warrant of the road magistrate aforesaid. And provided further, that the warrant of committal by any road magistrate for the offence in the last preceding section mentioned shall, in substance and effect, be agreeable to the form in the 3d schedule hereunto annexed set forth.

Magistrate may award costs.

41. And be it enacted, that it shall and may be lawful for any resident magistrate, should he so think fit, to award, in regard to any prosecution by virtue or under pretext of any of the provisions of this Ordinance, either to the party complaining or the party complained against, such reasonable costs as might lawfully be awarded by such magistrate in regard to any civil action pending in his court, and such resident magistrate may commit to prison any defendant adjudged to pay the same until the same shall be paid, in like manner as is by the 6th section of this Ordinance provided, in regard to the fine, penalty, or forfeiture which such defendant shall have incurred. Provided, however, that all such costs as may be awarded against any complainant shall be recoverable in manner and form as costs awarded against a plaintiff in a civil suit or proceeding in such court, except when the complainant shall appear to have committed the offence in the 24th section of this Ordinance mentioned, and be thereof convicted, in which case the amount of such costs shall, in the warrant of committal, be added to the amount of the fine imposed.

Fines to go to prosecuting party.

42. And be it enacted, that the whole amount of every fine, penalty, and forfeiture, levied upon conviction of any offence in contravention of any of the provisions of this Ordinance, shall, upon recovery thereof, be paid to the person prosecuting the offender, unless such person shall decline to receive the same, and direct some charitable

or other appropriation thereof, in which case it shall be applied accordingly.

Road Magistrates to make annual returns of cases.

43. And be it enacted, that every road magistrate shall, on or before the 31st day of December now next ensuing, and on or before the 31st day of December in each succeeding year, prepare from his record book, and transmit to His Excellency the Governor, a statement in writing, showing the number of cases connected with this Ordinance by him determined, the names of the parties, the date of the hearing, the judgment pronounced, and the aggregate amount received or levied, and the mode in which that amount has been applied; and every such statement shall be vouched by having added thereto by such road magistrate the declaration following, that is to say, "I, ———, do solemnly and sincerely declare that the above is a true and correct statement regarding the several matters mentioned and set forth in the 43d section of the Ordinance No. , of 1846," which declaration such road magistrate shall sign.

Road Magistrate—certain sections of Ordinance 32, 1837, to apply to.

44. And be it enacted, that the 5th and remaining sections of the Ordinance No. 32, of 1827, entituled, "Ordinance for creating justices of the peace in this colony," shall apply and extend to all road magistrates appointed under and by virtue of the provisions of this Ordinance, and every person acting in obedience to any warrant of any such road magistrates, or acting in aid of such person, precisely as if the said sections were herein again set forth, and word for word repeated, substituting only road magistrate for justice of the peace, whenever the former word occurs, and such person as last aforesaid, for the constable or other officer, or person or persons acting by his order and in his aid, in the 10th and 21st sections of the said Ordinance mentioned.

Interpretation—Governor, &c.

45. And be it enacted, that in the interpretation of this Ordinance, the term "Governor" shall mean the officer for the time being administering the government of this colony; and that the term "resident magistrate" shall comprehend any officer for the time being acting as such; and that the term "carriage" shall comprehend every description of vehicle, whether upon two wheels or more, or whether drawn by one horse or more, except when there is something in the context to restrict the meaning of the said term; and that the term "cattle" shall comprehend all animals used for draught; and that the singular number shall include several persons, animals, or things, as well as one person, animal, or thing; and that the masculine gender, shall include females as well as

males; unless there be something in the context repugnant to such construction.

46. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal. Ordinance not to extend to Natal.

47. And be it enacted, that this Ordinance shall commence and take effect from and after the 1st day of May next. Ordinance when to take effect.

SCHEDULE No. 1.

Oath of Allegiance to be taken by the Road Magistrate.

I, ———, do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria. So help me God. Oath of allegiance.

Oath of Office to be taken by the Road Magistrate.

I, ———, do swear, that faithfully and honestly, and to the best of my ability and power, I will discharge my duty as a Road Magistrate, appointed under and by virtue of the Ordinance No. , of 1846. So help me God! Oath of office.

SCHEDULE No. 2.

Warrant referred to in the 13th section of the above Ordinance.

To ——— (*name of the person to whom the warrant is directed.*)

Whereas ——— ———, (*name the known, or alleged, or supposed owner*), or other the owner or owners of a certain (*state the description of the carriage*) now at this place, (*or if at the place of any justice of the peace, field cornet, gaoler, or constable, state where,*) has (or have) this day been convicted before me of the offence of contravening the Ordinance No. 1846; and I have thereupon adjudged that for the said offence he (or they) do forfeit the sum of ———, (*state the amount of the fine imposed*) this is, therefore, to authorise and require you to seize and take possession of ——— (*state the description of the property, or, as the case may be, the number and species of the cattle to be seized*) now belonging to the said (*repeat the name of the carriage*), and to treat and dispose of the same as by the said Ordinance is provided, in order that of the same may be levied and made the said sum of ———, together with your reasonable charges about the sme; and for so doing this shall be your warrant. And rturn to me this warrant, endorsing thereupon what you sall have done under it. Warrant under section 13.

Given under my hand at ——, this —— day of——18—.

(Signed) ———, Road Magistrate.

SCHEDULE No. 3.

Warrant under sections 3, 34, and 39.

Warrant of Road Magistrates for committing to prison for offences under the 3d, 34th, and 39th sections of the above Ordinance.

To the gaoler or keeper of Her Majesty's gaol at ———.

Whereas ———, (*name the offender*) has been this day adjudged by me to forfeit and pay the sum of £——, for the offence of which he was convicted of contravening the section (*or*
of the Ordinance No. , 1846, but has not paid the said sum, this is, therefore, to require you to receive the said ——— into your custody, and him safely to keep to hard labour, for the space of (*state the period of imprisonment*) now next ensuing, unless the said sum of £—— shall be sooner paid.

Given under my hand at ——, this —— day of ——— 18 .

(Signed) ———, Road Magistrate.

*** Should the imprisonment be meant to be without hard labour, the words "*to hard labour*" in the above form are to be omitted.

SCHEDULE No. 4.

Certificate under section 18.

Certificate mentioned in the 18th Section of the above Ordinance.

This is to certify that ——— (*name the offender*) was this day adjudged by me to forfeit and pay me the sum of £——, for contravening the Ordinance N. , 1846, which fine he has not paid;—wherefore, and inasmuch as the said (*name the offender*) is needed to conduct the (*state the description of the carriage*) of which he is in charge, I have by virtue of the 18th section of the said Ordinance, caused to be seized and detained, (*state the description of the property*) as security for the payment of the said fine or otherwise for the re-appearance before me of the said (*name of the offender*,) on the day of next, ensuing, at o'clock of the forenoon, failing which the said (*repeat the description of the property*) will be dealt with as by the said 18th section is directed; of which all whom it may concern are required to take notice.

Given under my hand at this day of 18 ,

(Signed) ———, Resident Magistrate, or
" ———, Road Magistrate,
(*as the case may be.*)

SCHEDULE No. 5.

Recognizance mentioned in the 21st Section of the above Ordinance.

Recognizance under section 21.

Before me ——— (*state name and office of the person taking the recognizance*) on this —— day of ——— 18—, came and appeared ——— (*name and residence of the owner of the carriage*) who acknowledged himself to owe to our Lady the Queen, the sum of £———, to be levied and made of his goods and chattels if he shall make default in the condition following:—

Whereas the said ——— (*owner's name*) is the owner of a certain (*state the description of the carriage*) detained under the provisions of the 21st section of the Ordinance No.—,1846, upon a charge of this day (*or otherwise according to the truth,*) having at or near ——— (*state the place*) contravened the said Ordinance; now the condition of this recognizance is such, that if the said *owner* shall personally appear before the court of the resident magistrate of the district of ———, between the hours of eleven and twelve o'clock on the forenoon of the —— day of —— ——— next ensuing, then to anwer any charge which shall be preferred against him of having so as aforesaid contravened the said Ordinance, and not to depart without the leave of the said court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ———, Justice of the Peace,
or otherwise as the case may be.

*** Should there be any surety to the recognizance, add his name and residence next after that of the owner, changing "*himself*" into "*themselves*," "*his*" into "*their*" and in place of "*he*" in the last clause of the obligation inserting again the name of the owner.

SCHEDULE No. 6.

Recognizance mentioned in the 22d section of the above Ordinance.

Recognizance under section 22.

Before me ——— (*as in schedule No. 4*) on this —— day of —— 18—, came and appeared ——— (*name and residence of the witness*) who acknowledged himself to owe to our Lady the Queen the sum of £——, to be levied and made of his goods and chattels if he shall make default in the condition following:—

Whereas the said ——— hath this day brought or caused to be brought before me, ———, (*repeat the*

name) a certain (*state the description of the carriage*) whereof ——— is named as the owner, complaining that by or by means of the same, and at or near ———, (*place*) the Ordinance No —, of 1846, was this day (*or otherwise, according to the fact*) contravened; now the condition of this recognizance is such that if the said (*witness*) shall personally appear before the court of the resident magistrate for the district of ———, (*or before A. B. Esq, of———, road magistrate, as the case may be,*) between the hours of eleven and twelve o'clock in the forenoon of the —— day of ——— next ensuing, (*in case the witness is to appear before a road magistrate, the hours will depend on the circumstances, and should be so stated,*) then and there to give evidence touching and concerning the said alleged contravention, and shall not depart without the leave of the court, then this recognizance to be void.

Acknowledged before me as aforesaid.

(Signed) ———, Justice of the Peace,
(*or otherwise, as the case may be.*)

*** Should there be more witnesses than one, or one or more witnesses with sureties, the necessary changes will be understood from the note to Form in Schedule No. 5.

No. 10,—1846.] ORDINANCE [March 10, 1846.

For amending the Law relating to the Baking Trade.

Preamble.

WHEREAS doubts exist whether or not all bakers, within the colony, are by law required to take out licences to trade as such; and whereas it is expedient to remove such doubts, and to regulate in certain other respects the baking trade: Be it enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the proclamation of Lord CHARLES HENRY SOMERSET, the then Governor of this colony, bearing date the 6th of December 1822, and of any other law or usage heretofore in force in this colony, as shall be repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Repeal of laws and usages against this Ordinance.

Trade of a baker not to be exercised without a licence.

2. And be it enacted, that from and after the first of May next, no person shall within this colony exercise the trade or calling of a baker without having previously taken out a baker's licence. And any person exercising the trade or calling of a baker, as aforesaid, without having pre-

viously taken out such licence as aforesaid, shall, for every offence, forfeit five pounds. Provided, however, that every person within this colony lawfully keeping a retail shop, may, without taking out a baker's licence, sell bread, purchased or obtained from any person who shall have taken out a baker's licence aforesaid. Provided also that nothing herein contained shall extend to prevent any person from selling bread to travellers without any licence whatever.

Penalty £5.

Retail dealers may sell bread.

Persons without licence may sell to travellers.

3. And be it enacted, that every such licence shall be issued by the distributor of stamps of the district within which the intended bakery shall be situated, and shall be, in substance, in the same form, and shall be paid for at the same rate, as the baker's licence now granted to bakers in Cape Town; and such distributor as aforesaid shall issue such licences, to commence and be in force for the year 1846, from the 1st May next, and he shall allow a rebate of one-fourth the amount of every such licence for the said year; but every such licence as aforesaid, for every succeeding year, shall commence from and continue in force for twelve months after the 1st of January in every such year. Provided that nothing herein contained shall be construed so as to affect the validity of any baker's licence which shall be in force at the date of the promulgation hereof.

Distributors of stamps to issue licences.

4 And be it enacted, that no person who shall have taken out a baker's licence, shall be entitled, by virtue thereof, to bake or make bread at more than one place or premises, or to sell the same elsewhere than at the place or premises where it is baked or made. Provided, however, that any one person may take out as many baker's licences as he may require, and that the holder of a baker's licence, who shall also keep a lawful retail shop, may sell in such retail shop, bread baked and made at the place or premises licensed as a bakery, without taking out any additional baker's licence. And provided also, that the servant of any licenced baker, in charge of any delivering cart of such baker, may sell bread for and on account of such baker, from and out of such cart, while on its daily or usual delivering rounds.

Licence to protect only one baking place; but each baker may have several licences.

Bakers' servants may sell from delivering carts.

5. And be it enacted, that nothing in this Ordinance contained shall extend to alter or affect any municipal regulation of the Municipality of Cape Town touching and concerning the registration at the office of the Municipality of any licence to exercise the trade of a baker or to vend bread; but every such regulation shall be deemed, taken, and judged of in regard to bakers and venders of bread precisely as if this Ordinance had never been passed.

Registration—Ordinance not to effect municipal regulations.

Seller when to be deemed baker.

6. And be it enacted, that every person selling bread without having previously taken out a baker's licence, shall be deemed and taken to have himself baked and made the same, unless he shall prove that the same was baked and made by some licensed baker.

Repeal of 10th section of Proclamation of December 6, 1822.

7. And be it enacted, that the tenth clause or section of the proclamation aforesaid, of the 6th of December 1822, shall be repealed, and the same is hereby repealed accordingly.

Interpretation.

8. And be it enacted, that in the interpretation of this Ordinance, the term bread shall not extend to sweetened or spiced bread or cakes, or any species of confectionary, and that the singular number shall include several persons as well as one person; and that the masculine gender shall include females as well as males.

Ordinance not to extend to Natal.

9. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Ordinance when to take effect.

10. And be it enacted, that this Ordinance shall commence, and take effect from and after the 1st day of May next ensuing.

No. 11,—1846.] ORDINANCE [March 10, 1846.

For amending the Law relative to the Licensing of Retail Shops.

Preamble.

WHEREAS, by law, persons keeping retail shops in Cape Town, Simon's Town, and the towns and villages of Stellenbosch, Swellendam, Graff-Reinet, Uitenhage, Tulbagh, George, and the Paarl, are required to take out an annual licence for the privilege of so doing, on a stamp of £1 10 in value or amount: And whereas it is expedient to provide for the taking out, in certain other towns and villages, of similar licences: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the 1st May next, no person shall keep a retail shop in any of the towns, villages, or places mentioned in the schedule hereunto annexed, without having taken out an annual licence for the privilege of so doing, on a stamp of the value or amount of £1 10.

Retail shops at places set forth in schedule, to be licensed.

Distributors of stamps to issue licences, stamp £1 10.

2. And be it enacted, that every such licence shall be issued by the distributor of stamps of the district within which the intended retail shop shall be situated; and such distributor shall issue such licences, to commence and be in force for the year 1846, from the 1st May next, and he shall allow a rebate of one-third of the amount of every

such licence for the said year; but every such licence as aforesaid, for every succeeding year, shall commence from, and continue in force for twelve months after, the 1st of January in every such year.

Governor may extend law to other places.

3. And be it enacted, that it shall and may be lawful for the Governor of the Colony, by any proclamation or proclamations to be by him issued for that purpose, to declare and make known, from time to time, as occasion shall require, any other towns, villages, or places in which it shall have become just and equitable that the obligation of taking out such licences as aforesaid should be imposed, and from and after whatever time shall be fixed in and by any such proclamation as the time from and after which it shall be incumbent for all keepers of retail shops in any particular town, village, or place to have such licences as aforesaid, it shall be so incumbent precisely as if such licences were by this Ordinance expressly directed and required to be taken out.

Limits of places withi which Ordinance is to have effect.

4. And be it enacted, that, for the purposes of this Ordinance, the limits of every town, village, or place which is, or which shall become, a municipality, shall be the limits of such municipality, for the time being; and of every town, village, or place, not being a municipality, in which there shall be a public market, an imaginary circle drawn at the distance of two miles from such public market in every direction; and of every town, village, or place which shall neither be a municipality, nor have a public market, but which shall have erected therein or adjacent, a Dutch Reformed Church, commonly called or known as the church of such town, village, or place, an imaginary circle drawn at the distance of three miles from such church in every direction; and of every town, village, or place, not being any such town, village, or place as aforesaid, such limits as the Governor of the colony, by any proclamation or proclamations, to be by him issued, shall from time to time to fix and determine. Provided, that if any town, village, or place which is now a municipality, shall at any time hereafter cease to be such, the limits of such town, village, or place shall, for the purposes of this Ordinance, be the limits assigned to such municipality at the time of its cessation, unless and until the said limits shall be altered by some such proclamation as aforesaid, which alteration, however, and all further alterations which shall be deemed expedient, any such proclamation shall, from time to time, be competent to make.

Former law as to fines repealed.

5. And be it enacted, that so much of the proclamations of the 24th December 1807 and the 24th December 1812, or of any former law or usage in this colony, as imposes a

penalty of treble the value of the retail shopkeeper's licence, or any other penalty, upon all keepers of retail shops neglecting or failing to take out such licence, shall be repealed, and the same are hereby repealed accordingly.

Penalty not to exceed £5.

6. And be it enacted, that every person who shall keep a retail shop in any of the towns, villages, or places in this Ordinance, or in the schedule thereto annexed, or in any such proclamation as aforesaid mentioned and set forth, without having taken out the licence for the privilege of so doing by law required, shall forfeit for every such offence any sum not exceeding £5, and not less than £1.

Former law as to amount of licence repealed.

7. And be it enacted, that so much of the proclamation aforesaid of the 24th December 1812, as authorises the granting of a certain licence of the value of Rds. 5, or 7*s.* 6*d.*, for selling in Cape Town certain specified articles by retail, shall be repealed, and the same is hereby repealed accordingly; Provided, always, that notwithstanding such repeal, all such lastmentioned licences at any time heretofore duly granted shall continue in full force and operation, precisely as if such repeal had not taken place.

Ordinance not to affect sale of certain things.

8. And be it enacted, that from and after the 1st day of January 1847, it shall be lawful to sell in Cape Town, and that from and after the taking effect of this Ordinance, it shall be lawful to sell in all other places within this colony, fruit, vegetables, milk, eggs, firewood, cakes or confectionary, without taking out any licence for the privilege of so doing.

Interpretation.

9. And be it enacted, that in the interpretation, the term governor shall mean the officer administering the government of this colony for the time being, and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

Ordinance not to extend to Natal.

10. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance when to take effect.

11. And be it enacted, that this Ordinance shall commence and take effect from and after the 1st day of May next ensuing.

SCHEDULE.

Schedule of places.

Bathurst, Beaufort, Breda's Dorp, Caledon, Clanwilliam, Colesberg, Cradock, D'Urban, Fort Beaufort, Green Point, Graham's Town, Malmesbury, Melville, Mossel Bay, Napier, Papendorp, Port Elizabeth, Prince Albert, Richmond, Riversdale, Rondebosch, Sidbury,

Somerset (East), Somerset (West), Stockenstrom, Victoria, Wellington, Worcester, Wynberg.

No. 12,—1846.] ORDINANCE [Mar. 10, 1846.

For fixing the Value of Immoveable Property within certain Municipalities for the purposes of Road Rates.

Preamble.

WHEREAS, under and by virtue of the provisions of the Ordinance No. 8, 1843, entituled "Ordinance for improving the Public Roads of the Colony," the municipal valuation for the time being of the immoveable property within any municipalities in this colony is constituted and declared to be fixed and binding for the purpose of assessment under the said ordinance: And whereas in certain municipalities the immoveable property situated within the same respectively has been valued with reference to its annual value instead of its absolute value: And whereas all rates to be assessed, imposed, and levied under and by virtue of the Ordinance aforesaid, and the Ordinance No. 12, 1844, entituled "Ordinance to amend the Ordinance No. 8, 1843, entituled 'An Ordinance for improving the Public Roads of this colony,'" are to be assessed and imposed upon the absolute value of the immoveable property subject to assessment: And whereas, in order to save expense and avoid inconvenience, it is expedient to provide for turning the annual value of the immoveable property in the certain municipalities aforesaid into the absolute value: And whereas the absolute value of such property may be justly and fairly deemed and taken to be twelve times the annual value thereof:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the value for the purposes of the ordinances aforesaid, of any immoveable property situated within any municipality within this colony, in which municiaplity the valuation of such property for municipal taxation shall, for the time being, be estimated upon or with reference to the annual value thereof, shall be deemed and taken to be twelve times the amount of such annual value or rent.

Road rate how to be assessed where municipal rate is taken upon annual value.

2. And be it enacted, that if, at any time, the valuation for municipal taxation, of any immoveable property within any municipality shall be made or ascertained with reference to some part or proportion of a year or to some number of years more than one, or to some number of years more than one together with some part or proportion of a year; the valuation of such immoveable property

Principle to be applied to ascertain annual value in certain cases.

for the purposes of the ordinances aforesaid shall be deemed and taken to be twelve times the value of such property for one year, such annual value to be calculated according or in proportion to the value assigned to any part or proportion of a year, or to any number of years more than one, or to any number of years more than one together with any part or portion of a year.

Ordinance not to extend to Natal.

3. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance when to take effect.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 13,—1846.] ORDINANCE [March 25, 1846.

For facilitating Loans on security of Shares in Joint Stock Companies.

Preamble.

WHEREAS a number of banking, and other joint stock companies exist in this colony, constituted, respectively, by and under respective deeds of co-partnership or association, commonly called trust deeds: And whereas in all or most of such deeds as aforesaid, a certain clause or provision is contained, by which it is stipulated and agreed between the parties thereto, that proprietors should assign and transfer their shares by endorsements upon the certificates thereof, but that no such endorsement should be valid to transfer any interest in, or right or title to, any share until such endorsement should have been registered and certified in manner and form as by the said deeds provided: And whereas in all or most of the said deeds, a certain other clause or provision is contained, limiting and determining the number of shares which it shall be competent for any person to hold or possess: And whereas the two certain clauses or provisions aforesaid were devised and intended to apply to and govern cases of sale and purchase, and are inapplicable to cases in which shares are sought to be only pledged, seeing that in such cases, it would be inconvenient to require that a complete and entire change of ownership should be *ab initio* effected, while, moreover, the second of the clauses or provisions aforesaid, limiting and determining the number of shares to be held or possessed by any one person, would, in many instances, tend to prevent such complete and entire change from being effected: And whereas it may be apprehended, that the title of any person to or with whom any such certificate of shares of any joint stock company as aforesaid may be pledged, might, whether such certifi-

cates have endorsed thereon, fitting words of cession from the person pledging to the person receiving the pledge, or are only endorsed in blank by such first mentioned person, or are by him pledged and deposited without either cession or endorsement, but with a collateral power to sell conferred upon the person receiving the pledge to be executed in case of default made by the person pledging; be drawn into question and disputed by execution creditors, or creditors in an insolvent estate; so long as no assignment or transfer as aforesaid has been as aforesaid registered and certified: And whereas any such apprehension may tend to impede the freedom of raising money upon security of certificates of shares; and it is therefore expedient to remove the same, and to facilitate transactions tending to promote the interest and convenience of traders and others requiring from other persons temporary advances, or forbearance of their demands;—Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the legal holder of any share of the capital stock of any joint stock company now existing, or to be hereafter established, within this colony, to pledge, or to have pledged, such share for any purpose, object, or consideration for which moveable property may lawfully be pledged, by pledging, or having pledged, in manner and form as in the next succeeding sections mentioned, the certificate of such share, and the person receiving such pledge (called hereafter in this ordinance the pledge) shall be deemed and taken, as against the pledger and his creditors, whether in execution or insolvency, and all persons claiming from, through, or under him, or them, to have a good and valid hypothek or lien upon the said certificate and upon the said share, and to be in the same plight and condition in regard to such share as if the same, like the certificate thereof, were a thing capable of being actually handed over and deposited with such person, and had actually so been: Provided always, that nothing herein contained shall extend to alter or affect the mutual rights or claims of the company in which such share exists and the owner of any such share, which rights or claims, notwithstanding any such pledge, shall be deemed and judged of precisely as if such pledge had never been effected. And provided also, that nothing in this ordinance contained shall extend to supersede, invalidate, or otherwise affect any special provision in any trust deed contained, touching and concerning the manner and form in which alone pledges of shares should be constituted and effected.

Shares of public companies to be pledged by pledging the certificates of such shares.

2. And be it enacted, that every such share as afore- Certificates how to be pledged.

said shall be deemed and taken, as against the pledger his heirs and creditors, to be or to have been lawfully and effectually pledged, when and as often as the certificate of such share shall be, or shall have been, delivered into and detained in the actual custody and possession of the pledge; having endorsed thereon, in fitting words, a cession of the said share made in favor of the pledgee, by the person entitled to cede the same; or having thereon the blank endorsement of such person so entitled; or otherwise, when in reference to the certificate so delivered and detained as aforesaid, some instrument, note, or memorandum in writing, shall be, or shall have been, made, containing a description of the share pledged, and a statement of the purpose, object, or consideration, for which the same shall have been pledged. Provided always, that nothing herein contained shall be construed so as to deprive any pledge sought to be effected in any manner or form other than is in this section mentioned, of any force or validity which it might otherwise have had. And provided also, that nothing in this ordinance contained shall be deemed or taken to abridge, alter, or affect the right, if any, of any pledgee of any share to retain the same for or on account of any future or other debt or demand, not contemplated at the time of the original pledge, or mentioned in any such instrument, note, or memorandum as aforesaid, which right shall be judged of and determined according to the ordinary rules of law relative to the detention of moveables pledged, for the security of future or other debts or demands.

Manner of proceeding in regard to the obtaining fresh certificates, when the former are, or are alleged to be lost

3. And whereas certificates of shares which have been pledged, or otherwise delivered, upon good consideration, may, through fraud, be alleged, or through mistake be supposed, to be lost or destroyed, and thereupon application for fresh certificates may be made to the directors of the company in which the shares exist; And whereas a sudden or secret compliance with any such application might tend to the prejudice of pledgees or other persons, and it is therefore expedient to provide for the protection of such pledgees or other persons, and, at the same time, to provide for the issue of fresh certificates in cases where the original certificates shall appear to have been really lost or destoyed; Be it enacted, that in every case in which any such application as aforesaid shall be made to the directors of any joint stock company, such directors, in case they shall not have knowledge or notice that the share in regard to which the fresh certificate is applied for is in pledge, or otherwise disposed of, shall (but at the cost and charge of the

applicant) insert an advertisement in the *Government Gazette*, and in such one of the newspapers in the colony as they shall select, stating that an application has been made for a fresh certificate for the share numbered —— and issued to ——— as the proprietor thereof, upon the ground that the original or former certificate of the said share has been lost or destroyed (as the case may be,) and that, should no objection be lodged at the office of the company on or before some certain day to be fixed in such advertisement (not being less than 14 days from the date of the last publication of the said advertisement), the said fresh certificate will be issued as requested.

When fresh certificate granted as herein directed, no liability to attach to company or directors.

4. And be it enacted, that in case no such objection as aforesaid shall be lodged, it shall and may be lawful for the said directors to issue, or cause to be issued, the fresh certificate applied for, and such directors shall not, nor shall the company, incur thereby any liability whatever: Provided always, that if any pledgee of any certificate and share shall have at any time before the application for a fresh certificate given notice in writing at the office of the company, that the same has been pledged to him, or if the pledgee of any certificate and share shall lodge an objection in persuance of any such advertisment, and the directors shall, nevertheless, without the consent of such pledgee, or the decree of some competent court, issue such fresh certificate, such directors shall be personally responsible to such pledgee for any loss or damage which he may thereby sustain.

Settlement of the respective rights of parties when fresh certificates have been issued while the former were in pledge.

5. And be it enacted, that in case the pledgee of any original or former certificate of any share of which a fresh certificate is applied for as aforesaid, shall not have given notice in writing of such pledge at the office of the company; or after such advertisement as aforesaid shall have been duly published, shall not within the time in that behalf specified lodge an objection to the issue of any fresh certificate; and the directors shall, in consequence, have issued or caused to be issued such certificates to the person applying for the same, every subsequent purchaser or pledgee dealing *bona fide*, and without notice of the older pledge, upon the faith of the fresh certificate as evidence of the ownership of the share which it represents, shall be intitled to be preferred to the full extent of his claims and demands above or before the original pledgee: Provided, however, that such original pledgee shall still be entitled to be preferred above or before the person by whom, or in whose right or supposed right, any such fresh certificate shall have been obtained, and above or before his heirs, and above or before his creditors, whether in

execution or insolvency, but so, however, as not to require any execution creditor to refund any monies actually paid out to him, or to require the creditors of any insolvent estate to refund any dividends by them actually received.

Interpretation clause.

6. And be it enacted, that in the interpretation of this ordinance the term person shall embrace any co-partnership or company, and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

Ordinance not to extend to Natal.

7. And be it enacted, that nothing in this ordinance contained shall extend to the District of Natal.

Commencement of this Ordinance.

8. And be it enacted, that this ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 14,—1846.] ORDINANCE [March 25, 1846.

For Improving the Law of Evidence.

Preamble.

WHEREAS the inquiry after truth in Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue, both in criminal and civil cases, should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit to be given to the witnesses adduced, and on the truth of their testimony: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the Ordinance No. 72, 1830, entituled "Ordinance for altering, amending, and declaring certain respects the Law of Evidence within this Colony," and of the Ordinance No. 19, 1845, entituled "Ordinance for altering, amending, and declaring in certain respects the Law of Evidence within the District of Natal," and of any other law or custom heretofore in force in any part of this colony, as is repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be repealed, and the same is hereby repealed accordingly.

Previous conviction no disqualification.

2. And be it enacted, that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding, by reason that such person has been previously convicted of any crime or offence.

Interest in event of suit, no disqualification.

3. And be it enacted, that no person offered as a witness shall hereafter be incompetent to give evidence in any action, suit, or proceeding, by reason of any interest

which such person may have in the matter in question, or in the event of such action, suit, or proceeding. Provided, however, that nothing herein contained shall be constructed so as to alter, or in anywise affect, the law relative to the giving or requiring of the oath or evidence of either party to any suit, action, or proceeding, which oath or evidence shall hereafter be received or required in in such cases, and none other, as those in which the same might lawfully have been received or required, previously to the passing of this Ordinance. And provided also, that this Ordinance shall not be construed so as to render competent to give evidence, any person, though not a party on the record, in whose immediate and individual behalf any action, suit, or proceeding may, either wholly or in part, be instituted or defended, or the husband or wife of any such person respectively.

Alteration not to affect the law regarding the oaths of parties.

Persons for whose benefit the suit is instituted not rendered competent by this Ordinance.

4. And be it enacted, that when and as often as any nominal party to the suit, as such nominal party is in the 26th section of Ordinance No. 72 aforesaid mentioned and described, shall be so situated as to be primarily liable to pay the costs of suit of the adverse party, in case the judgment or verdict in such suit should be in favor of such adverse party, but shall not be otherwise interested, it shall and may be lawful for any person on whose behalf such suit shall be brought or defended by such nominal party, to pay into court such sum as the said court shall deem reasonable, and award to meet and satisfy such costs as aforesaid, there to abide the event of the suit, and the further order of the court; and thereupon such nominal party shall be deemed and taken to be in the same plight and condition as if he had been released by the adverse party to such suit from his liability for the said costs.

Nominal party when interested in costs may be rendered competent by paying money into court.

5. And be it enacted, that no person shall hereafter be incompetent to give evidence in any case by reason that, in such case, he prosecutes at his own instance, for any crime or offence. Provided, however, that when any such person shall, in any such case, seek the recovery or restitution of any money, matter, or thing, he shall not, by virtue of anything in this Ordinance contained, be deemed (if otherwise incompetent to give evidence) to be rendered competent so to do.

Private Prosecutors to be competent witnesses.

Exception.

6. And be it enacted, that persons belonging to, or sprung from, any barbarous and uncivilised tribe or race of people in Africa, and whether usually resident in the colony or not, who, from ignorance or defective knowledge of God, and total or partial absence of religious belief, shall be found not to understand the nature or

Certain unsworn testimony admissible.

recognise the religious obligation of an oath, shall and may be admissible to give evidence in any court within this colony, without being sworn, or being upon oath. Provided, always, that before any such person shall proceed to give evidence, the Judge or Magistrate before whom he shall be offered as a witness shall admonish him to speak the truth, the whole truth, and nothing but the truth; and shall further administer, or cause to be administered to such person, any form which shall, either from his own statement or other source of information appear to be calculated to impress his mind, and bind his conscience, and which shall not, as being of an inhuman, immoral, or irreligious nature, be obviously unfit to be administered. And provided also, that any such person who shall wilfully and falsely state any thing, which, if sworn, would have amounted to the crime of perjury, shall be deemed to have committed the said crime, and shall, upon conviction, be subject to such punishment as is, or shall be by law, provided for, or in regard to the said crime.

"Separatists" to make their declaration in lieu of an oath.

7. And whereas in a session of parliament, holden in the 3rd and 4th years of the reign of his late Majesty King William the 4th, an Act was passed for enabling the sect or people called "Separatists," who from conscientious scruples refuse to take an oath in courts of justice, or other places, to make, in lieu and stead of an oath, their solemn affirmation and declaration: And whereas it is expedient that the said Act should, in substance, be extended to this colony: Be it enacted, that every person for the time being belonging to the sect or people called and known in England and Ireland, by the name of "Separatists" who shall be required upon any lawful occasion to take an oath in any case, when by law an oath is or may be required, shall, instead of the usual form, be permitted to make his or her solemn affirmation or declaration in the words following, *videlicet*, "I, A. B., in the presence of Almighty God, solemnly, sincerely and truly declare and affirm, that I am a member of the religious sect called and known, in England and Ireland, by the name of "Separatists," and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect, and I do also in the same solemn manner, affirm and declare, &c."; which said affirmation and declaration shall be of the same force and effect in all courts of justice and other places where by law an oath is, or may be, required, as if such Separatist had taken an oath in the usual form; and if any person making such affirmation and declaration shall, in fact,

not be one of the sect or people aforesaid, or if he shall wilfully and falsely affirm or declare anything which, if sworn in the usual form, would have amounted to the crime of perjury, such person shall be deemed to have committed the crime of perjury, and shall, upon conviction, be subject to such punishment as is or shall be by law provided for, or in regard to, the said crime.

Ordinance to extend to Natal.

8. And be it enacted, that this Ordinance shall extend to the District of Natal.

Commencement of this Ordinance.

9. And be it enacted, that this Ordinance shall commence and take effect in the said District of Natal from and after such date as shall be fixed and appointed for the commencement thereof, by any Proclamation to be by the Lieutenant Governor of the said District for the purpose issued, and posted upon, or affixed to, any public place in Pietermaritzburg; and that the same shall commence and take effect, in the other parts or portions of this colony, from and after the date of the promulgation thereof.

Ordinance not to affect Actions, &c., pending.

10. And be it enacted, that nothing in this Ordinance contained shall apply to, or affect, any suit, action, or proceeding, which shall be pending at the time of the commencement of this Ordinance.

No. 15,—1846.] ORDINANCE [April 24, 1846.

For Rectifying certain Title Deeds heretofore issued to certain of the Settlers of 1820.

Preamble.

WHEREAS the Ordinance No. 15, of 1844, entituled "Ordinance to provide for the enregisterment in the land register of the colony, of certain subdivisions of the locations and extensions of the settlers of 1820," has been found well adapted to secure the objects for which it was intended: And whereas in some instances grants have been issued to certain of the said settlers of 1820, in manner and form as if such settlers were only respectively the heads, or nominal heads, of parties of which the other members had acquired and possessed certain rights to the land mentioned in such grants respectively, or some shares or proportions of the said land, while in truth and in fact, no person or persons whatever, other than the person named in such grants respectively as if he were only the head or nominal head of his party, had acquired or possessed any right or title to, or interest in, any such land, or has or have ever claimed to have or possess any such right, title, or interest: And whereas, by reason of the mode in which such grants as aforesaid are

framed and made out, the sole and exclusive ownership of the persons to whom respectively, as such heads as aforesaid, the same were issued, is liable to be doubted, and they therefore find it difficult to sell, dispose of, or otherwise deal with their property as they are of right entitled to do: And whereas proceedings to be instituted in any competent court for the purpose of having such grants as aforesaid amended, and declared to be grants to and for the sole exclusive use and benefit of the persons who are, as aforesaid, solely and exclusively entitled to the land comprised therein, would prove to be in many instances inapplicable. and would, moreover, be necessarily attended with delay and expense: And whereas it is expedient to use and apply the provisions of the ordinance aforesaid, No. 15, 1844, for the purpose of having the grants aforesaid amended by cancelling the same and issuing fresh grants in proper form in their room and stead:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this colony, when and as often as the board of commissioners for lands shall have recommended any person, as the person justly and rightfully entitled to have, hold, and enjoy as his own sole and exclusive property, any land of which a grant has been at any time heretofore issued to such person (or to any other person, from, through, or under whom he lawfully claims) as the head or nominal head of any settlers' party, by reason that it shall appear to such board that none of the individuals composing such party had, by paying the certain deposits in the preamble of the Ordinance aforesaid No. 15, 1844, or otherwise, ever obtained any right in or to any portion of the land mentioned and comprised in any such grant, to publish such a proclamation as is in the 2d section of the said last mentioned Ordinance mentioned, in manner and form as by the said 21 section is enjoined, in which proclamation shall be stated the particulars of the grant which it is intended to cancel in order to issue a fresh grant of the land comprised therein to such person as aforesaid, and to proclaim that unless objections be lodged at the office of the secretary to government, in manner and form as in the said section stated, such grant as aforesaid will be cancelled, and such fresh grant issued accordingly, and thereupon all and singular the provisions of the 3d and remaining sections of the said Ordinance No. 15, 1844 (save and except the 9th, 10th, 11th, and 14th sections) shall be deemed and taken, *mutatis mutandis*, and in such manner as best and most effectually to pro-

Proclamation to be made of names of persons recommended by Land Board to receive new or amended grants.

mote the object and meaning of this Ordinance, to apply, as if inserted herein, precisely as if the grant intended to be cancelled for the purpose of this Ordinance, as before set forth, were a title deed intended to be cancelled for the purposes of the said Ordinance No. 15, 1844. Provided always, that it shall and may be lawful for the Governor, on the recommendation of the Board aforesaid, instead of cancelling any such grant as aforesaid, and thereupon issuing a fresh grant in lieu and stead thereof, to make an endorsement upon the old grant (if the same be in existence and produceable), or otherwise upon any copy thereof to be supplied by or from the office of the Surveyor General, to the purport or effect that the grant in question is to be taken and construed as if it had been issued to the person erroneously named therein as head, or nominal head, of a party of settlers in his sole and individual capacity, and for his exclusive use and benefit. But whether the Governor aforesaid, on the recommendation of the said Board, shall see fit to adopt the form of such an endorsement as aforesaid or the form of a fresh grant, no other or different proclamations or notices than those aforesaid shall be necessary.

Old grants need not be cancelled, but may be amended by endorsement.

2. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof, and that no proclamation as is hereinbefore mentioned or referred to, shall be published after the 31st December 1847.

Ordinance when to commence. No Proclamation to be published after 1847.

No. 16,—1846.] ORDINANCE [April 24, 1846.

For creating Resident Magistrates within the District of Natal.

WHEREAS it is expedient to provide for the more effectual administration of justice within the District of Natal, and for that purpose to create and establish certain inferior courts within the same:—Be it, therefore, enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the lieutenant-governor of the district of Natal, from time to time, as occasion may require, to appoint one magistrate, who shall be called "The Resident Magistrate," for each and every division into which the said district of Natal shall be divided, for the purposes of this Ordinance, as hereinafter mentioned.

Preamble.

Lieut. Governor to appoint Resident Magistrates.

2 And be it enacted, that it shall and may be lawful for the said lieutenant-governor, by any Proclamation to

Lieut. Governor to declare and alter divisions.

be by him made and issued, and to be posted or affixed in like manner as the certain other proclamation in the last section of this Ordinance mentioned, from time to time, to divide the said district of Natal into so many divisions as he shall, for the purpose of this Ordinance, deem to be necessary or convenient, and the limits of every such division to alter as occasion may require; and every person so appointed to be the resident magistrate of any such division, shall have jurisdiction within the same.

Oaths to be taken by Resident Magistrates.

3. And be it enacted, that every person who shall be appointed such resident magistrate, shall take and subscribe the oath of allegiance, and the oath of office, set forth in the schedule hereunto annexed, before the recorder of the district of Natal, or before any justice of the peace within the said district, who are hereby empowered and required to administer the same.

Extent of their jurisdiction in civil cases.

4. And be it enacted, that every such resident magistrate shall have jurisdiction in all civil cases within the division for which he shall have been appointed, wherein the sum or matter in dispute shall not exceed the amount or value of £15, and wherein the title to any lands or tenements, or any fee, duty, or office, is not in question, or whereby rights in future cannot be bound.

In criminal.

5. And be it enacted, that the said resident magistrate shall have jurisdiction, without appeal, in all cases of crimes and offences wherein any person may be accused of any crime or offence not punishable by death, banishment, or transportation: Provided, always, that it shall not be lawful for any resident magistrate to punish any offender in any higher or more severe manner than by fine not exceeding £10, and imprisonment, with or without hard labor, for a period not exceeding three months, and by whipping privately in prison not exceeding 25 lashes, except as to such crimes and offences for the commission of which any higher or more severe punishment, whether by fine or imprisonment, or both, shall be provided, and in which jurisdiction shall be expressly given by any special law or ordinance.

And in regard to fines and penalties.

6. And be it enacted, that such resident magistrate shall have jurisdiction in all cases of fines or penalties not exceeding £40, which have been, or shall be, imposed on persons for offences by any ordinance which at any time hereafter shall be in force in the said district of Natal, for the recovery of which no provision repugnant to, or inconsistent with, the provisions contained in this and in the three next succeeding sections of this Ordinance shall be expressly made in such law or Ordinance. And such

fines or penalties shall be recovered before the resident magistrate of the division in which the respective offences shall be committed, and shall, in case of non-payment thereof, be levied by warrant of distress, and sale of the goods and chattels of the offender, or enforced, at the discretion of such resident magistrate, by such special commitment in execution as is hereinafter prescribed for, and declared generally applicable to, the recovery of such fines and penalties.

Proceedings in event of non-payment of fines.

7. And be it enacted, that whenever it shall appear to any resident magistrate by whom any fine or penalty shall be adjudged to be paid, upon the return of such warrant of distress, that no sufficient goods and chattels of the offender can be found, whereof to levy such fine or penalty within the jurisdiction of such resident magistrate, it shall be lawful for such resident magistrate to issue forth his warrant for committing such offender to the common gaol, for any term not exceeding three calendar months, unless such fine or penalty shall be sooner paid; or in case it shall appear to the satisfaction of such resident magistrate, either by the confession of the offender, or otherwise, that he hath not sufficient goods or chattels within the jurisdiction of such resident magistrate, whereof to levy such fine or penalty, such resident magistrate may at his discretion, without issuing any warrant of distress, proceed to the commitment of such offender or offenders, in such and the like manner as if a warrant of distress had been issued, and a return of *nulla bona* made therein as aforesaid.

Defaulters may be imprisoned if goods insufficient to meet warrant of distress.

Or without such warrant if no property.

8. And be it enacted, that in case any offender or offenders committed to the common gaol merely for the non-payment of any such fine or penalty, shall, at any time during the period of his imprisonment, pay, or cause to be paid, to the keeper of such common gaol, the full amount of such fine or penalty, it shall be lawful for such keeper of such common gaol, and he is hereby required, forthwith to discharge such offender from his custody.

Defaulter to be released if fine paid during imprisonment.

9. And be it enacted, that all fines and penalties imposed by any resident magistrate shall, unless it be otherwise expressly provided by the law or ordinance imposing the same, be paid into the district treasury. Provided, that it shall and may be lawful for the lieutenant-governor of the district of Natal, in each particular case, to determine, award, and direct what share, if any, of the amount of any fine imposed, shall be paid to any person who may have given information concerning the same.

Fines to be paid to district treasury unless otherwise directed by law.

Lieut. Governor may award share of fine to the informer.

10. And be it enacted, that every resident magistrate appointed under and by virtue of this Ordinance, shall be,

Magistrates under this Ordinance to be Magis-

trates within meaning of Ordinance No. 18, 1845.

and is hereby declared to be, a magistrate within the meaning of the Ordinance No. 18, 1845, entituled "Ordinance for regulating the manner of proceeding in criminal cases in the district of Natal;" and shall also be, *ex officio*, a justice of the peace.

In what Divisions offences may be tried.

11. And be it enacted, that when any crime or offence of such a nature as to be within the jurisdiction of the resident magistrate, shall be committed on the boundary or boundaries of two or more divisions, or within two miles of any such boundary or boundaries, or shall be begun in one division and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished by the resident magistrate of any of the said divisions, in the same manner as if it had been actually and wholly committed therein.

Offences upon persons or property in or upon vehicles or vessels, triable in any division through which they may have passed.

12. And be it enacted, that when any crime or offence shall be committed on any person, or on, or in respect of, any property, in or upon any coach, wagon, cart, or other carriage whatever, employed in any journey, or on board any vessel whatever, employed on any voyage or journey upon any river, within the district of Natal, such crime or offence may be dealt with, inquired of, tried, determined, and punished by the resident magistrate of any division through any part whereof such person, coach, wagon, cart, or carriage, or vessel shall have passed in the course of the journey or voyage, during which such crime or offence shall have been committed, in the same manner as if it had been actually and wholly committed in such division.

Courts to be held twice a week.

13. And be it enacted, that every such resident magistrate shall hold a court, and inquire of all causes or actions, whether civil or criminal, which shall be brought before him, over which jurisdiction is hereby given to him, in the court room of his division or place, on two days in the week at the least, and oftener if occasion shall require.

To be courts of record.

14. And be it enacted, that the said courts shall be, and the same are hereby declared to be, courts of record.

Appeal or review before Recorder.

15. And be enacted, that it shall and may be lawful for any party conceiving himself aggrieved by any judgment or decision of any resident magistrate (save and except such judgments or decisions as may have been made under and by virtue of the 5th section of this Ordinance), to appeal against such judgment or decision to the district court of Natal; or otherwise, to bring the same under the review of the said court.

Public prosecutions how to be conducted.

16. And be it enacted, that all prosecutions at the public

instance before the said courts of resident magistrate shall be instituted and conducted by the crown prosecutor, or by such person or persons as he may, from time to time, appoint for that purpose.

Parties may conduct their own cases.

17. And be it enacted, that it shall and may be lawful and competent for any private party so connected with, and affected by, any alleged crime or offence as to come within the principle of the 14th and 15th sections of Ordinance No. 18, 1845, to prosecute, summarily, by complaint in any resident magistrate's court, for such crime or offence, provided the same be within the jurisdiction of the said court.

But Public Prosecutor may take up, stay, and conduct further proceedings if necessary.

18. And be it enacted, that in every case of any such summary prosecution, as aforesaid, it shall be lawful for the crown prosecutor, or other officer who by law is entitled to prosecute at the public instance in such court, at any stage of the prosecution to appear in court and to take up the prosecution of such complaint at the public instance, and thereafter to conduct the proceedings in such case as if the prosecution had been originally at the public instance, or to apply by motion to the resident magistrate to stop all further proceedings in such case, in order that a prosecution for the same crime or offence may be instituted at the public instance in some other form or court, and such resident magistrate shall, in every case, be bound to make an order in terms of such motion.

When Magistrate may stay further proceedings.

19. And be it enacted, that when, in the course of any trial in the court of any such resident magistrate, it shall appear that the crime or offence under trial is, from its nature or magnitude, only subject to the jurisdiction, or more proper for the cognizance, of the district court, then the resident magistrate before whom such court is held shall stop the trial, and shall commence and take a preparatory examination under, and according to, the provisions of the Ordinance No. 18, 1845.

All documents to be in English.

20. And be it enacted, that all sentences, decrees, judgments, writs, summonses, notices, rules, orders, warrants, commands, and other proceedings of the said court, shall be, and shall be made, in the English language, and in all criminal cases the witnesses against and for any accused person or persons, shall declare their evidence *viva voce*, and in open court.

Evidence to be *viva voce*, and in open court.

Lieut. Governor may separate civil from criminal jurisdiction, and make other arrangements in that respect.

21. And be it enacted, that it shall and may be lawful for the Lieutenant-Governor of the said District of Natal, from time to time, by any such proclamation as aforesaid, to separate, should he see cause so to do, the civil jurisdiction hereby conferred upon the courts of resident magistrates from the criminal jurisdiction hereby conferred upon

such courts, and either to appoint within the same limits two separate persons as resident magistrates respectively to administer, the one the civil, and the other the criminal jurisdiction within the said limits, or, otherwise, to assign distinct and different limits for the civil and criminal jurisdictions, so that one resident magistrate shall have jurisdiction in civil cases within certain limits, and another resident magistrate shall have jurisdiction in criminal cases within certain other limits, or so that any resident magistrate may have a united civil and criminal jurisdiction within certain limits, and also a civil or criminal jurisdiction (as the case may be), within certain other limits, within which the criminal or civil jurisdiction (as the case may be) shall belong to some other resident magistrate.

Lieut. Governor may with advice of Recorder frame rules for such courts.

22. And be it enacted, that it shall and may be lawful for the Lieutenant-Governor of the District of Natal, by and with the advice of the Recorder of Natal, to frame such rules and regulations as to him may seem fit, touching and concerning the officers to be attached to such courts, and the process of the said courts in civil and criminal cases respectively, and the practice to be observed therein, in such cases respectively, and the manner and form of carrying the judgments or decisions of such courts into execution, and the time within which appeals therefrom must be presented, and the conditions upon which such appeals shall be allowed, and the time within which such judgments or decisions must be brought in review, and the persons entitled to appear and act as agents in the said courts, and the fees and charges to be allowed to such agents, and the fees and charges to be taken by the officers of the said courts, and generally all such other rules and regulations as may be necessary to give full and complete effect to the jurisdiction of the said courts: Provided always that no such rules or regulations shall be repugnant to, or inconsistent with, any of the provisions of this Ordinance, and that such rules and regulations shall, as much as may be, be in general conformity with any rules and regulations touching the same subject matter in force in the courts of resident magistrates in those parts of this colony other than the District of Natal, and that such rules and regulations shall be promulgated for general information in such manner as to the said Lieutenant-Governor shall seem fitting.

Explanation of terms.

23. And be it enacted, that in the interpretation of this Ordinance, the term "Lieutenant-Governor" shall mean the officer for the time being administering the Government of the District of Natal; and that whenever mention is made of any resident magistrate, or other public officer,

such officer shall be deemed to be the officer for the time being acting as such, and that the singular number shall include several persons as well as one person, and that the masculine gender shall include females as well as males.

24. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the Lieutenant-Governor of the said district for that purpose issued, and posted upon, or affixed to, any public place in Pietermaritzburg. Ordinance when to commence.

SCHEDULE.

Oath of allegiance to be taken by the Resident Magistrate.

I , do sincerely promise and swear, that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, so help me God! Oath of allegiance.

Oath of office to be taken by the Resident Magistrate.

I , do swear, that faithfully and honestly, and to the best of my ability and power, I will discharge my duty as a Resident Magistrate, appointed under and by virtue of Ordinance No. 16, of 1846, so help me God! Oath of office.

No. 17,—1846.] ORDINANCE [April 24, 1846.

To amend the Law regarding Marriages within the District of Natal.

Whereas it is expedient, that the provisions of the Order of Her Majesty in Council, bearing date the 7th of September 1838, amending the marriage laws of certain colonies, plantations, and possessions in the said Order mentioned, should, so far as they can be applied, be extended to the District of Natal: Be it therefore enacted, that any laws, customs, or usages heretofore in force in the said District, so far as the same are repugnant to, or inconsistent with, any of the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly. Preamble. Existing marriage laws &c., at Natal, repealed.

2. And be it enacted, that all and singular the clauses and provisions of the said Order in Council of the 7th of September 1838, so far as the same can be applied to the said District of Natal, shall be of force and effect within the said district, precisely as if all the clauses and provisions thereof which can be so applied, were herein again set forth, as so many clauses and provisions of this Ordi- Provisions of H. M. Order in Council of 7th September 1838, to have effect at Natal, as far as applicable.

nance, and expressly applied to the said district: Provided always, that all and singular the clauses and provisions of the said Order in Council, which are hereinbefore constituted and declared to be clauses and provisions of this Ordinance, shall be taken and construed for the purpose of this Ordinance, as they would have been taken and construed in the said Order in Council, had the same, when originally issued, embraced or extended to the said District of Natal, as a distinct colony separate from the colony of the Cape of Good Hope.

When to commence.

3. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant-Governor of the district aforesaid, for that purpose issued, and posted upon, or affixed to, any public place in Pietermaritzburg.

No. 18,—1846.] ORDINANCE [April 24, 1846.

For regulating Sales by Auction within the District of Natal.

Ordinance No. 6, of 1844, extended to Natal.

WHEREAS it is expedient that the provisions of the Ordinance No. 6, 1844, entituled "Ordinance for regulating Sales by Auction," should, with certain modifications, be extended to the District of Natal: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the clauses and provisions of the Ordinance aforesaid (but subject, however, to the modifications hereinafter mentioned) shall be of force and effect within the District of Natal, precisely as if the same were herein again set forth as so many clauses and provisions of this Ordinance, and expressly applied to the said district.

With certain modifications.

2. And be it enacted, that instead of the words "from and after the said first day of July 1844, in the 2d and 12th sections of the said Ordinance, there shall, for the purpose of this Ordinance, be deemed and taken to be inserted the words, "from and after such a day as the Lieutenant-Governor of the District of Natal shall, by any proclamation to be by him issued, appoint;" and that when and as often as the commissioner of stamps in Cape Town, or the distributors of stamps in the several districts of the colony, or the collector of taxes in Cape Town, or the civil commissioner of the district, are mentioned in the said Ordinance or the schedule thereunto annexed, there shall be deemed and taken, for the purpose of this

Ordinance, to be meant and intended such persons respectively as the said Lieutenant-governor shall, by any writing under his hand, nominate and appoint to perform any one or more of the duties by the said Ordinance imposed upon the certain officers above enumerated respectively; and that the licence to exercise the trade or business of an auctioneer within the said district need not be upon paper stamped, but shall be paid for at the rate in the said Ordinance mentioned; and that the words "colonial treasury" in the 2d section of the said Ordinance, shall mean the treasury of the said district, and that the words "Governor of this colony" in the 12th section, and the words "His Excellency the Governor," and "the Government of this colony," in the 4th section of the said Ordinance, shall mean respectively His Honor the Lieutenant-Governor of the said district, and the local executive Government thereof, and that in the form of recognizance in the schedule to the said Ordinance contained, such days or times shall be inserted for the production of the books therein referred to, as the said Lieutenant-Governor shall order and appoint.

Licences need not be upon stamped paper.

Periods for production of Auctioneers' Books to fixed by Lieut. Governor.

3. And be it enacted, that every licence to exercise the trade or business of an auctioneer, for every year succeeding the year 1846, shall commence from, and continue in force for, 12 months after the 1st of January in every such year; and that for every such licence, for, or in respect of, so much of the said year 1846 as shall be yet unexpired at the time of the commencement of this Ordinance, there shall be paid a sum calculated at and after the rate of five shillings per month.

Licences to be for 12 months, from the 1st January in each year, except for the present year.

4. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the Lieutenant-Governor of the district aforesaid, for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg.

Ordinance when to commence.

No. 19,—1846.] ORDINANCE [April 30, 1846.

For securing the due performance of Burgher Duty.

Preamble.

WHEREAS it is expedient to make provision for the better and more effectual performance of Burgher duty by the Burghers of this Colony,—and for giving effect to the Proclamation of His Excellency the Governor, bearing date the 22nd day of April 1846, proclaiming Martial Law in force throughout the colony: Be it therefore enacted by the

Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that if any inhabitant of this colony, capable of bearing arms for military operations, shall without just cause refuse or neglect to enrol himself, and serve as a member of the Burgher force of his division when thereto required by the civil commissioner of such division,—or if any inhabitant shall wilfully withdraw himself from serving in and with such force, according to such orders, rules, and regulations as do and shall appertain to the conduct and management thereof, such inhabitant shall be deemed and taken to have committed a contravention of this Ordinance, and shall, upon conviction, be liable to a penalty not exceeding £50, and imprisonment for any period not exceeding six months.

Any inhabitant refusing to serve when duly required, or withdrawing from service,

Liable to fine and imprisonment.

Resident Magistrate or Justice of the Peace to commit offender to Gaol.

2. And be it enacted, that it shall and may be lawful for any resident magistrate or justice of the peace, upon information taken upon oath, that any inhabitant as aforesaid has committed any contravention of this Ordinance, to commit the offender, by warrant, under his hand, to any public gaol in this colony, there to be detained without bail, until brought to trial for the said offence.

By whom, and how such requisitions to be made.

3. And be it enacted, that every such inhabitant as aforesaid shall be deemed and taken to be legally required by the civil commmissioner aforesaid, when and as often as there shall be produced to him any order, command, or request, in writing, from such civil commissioner or any field-cornet or assistant or acting field cornet within his division, or whenever any of the said last-mentioned persons shall verbally make a requisition upon such inhabitant.

Commencement and duration of Ordinance.

4. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof;—and shall continue in force until the 1st day of August in the year of our Lord 1846, and no longer.

No. 20,—1846.] ORDINANCE [May 4, 1846.

For Regulating the Levy of the Burgher Force of Cape Town and Green Point.

Preamble.

WHEREAS the Burgher Force of the several country districts has been called out to oppose those Kafir Tribes now in open hostility against this colony: And whereas no adequate provision, by law, exists for enrolling such or so many of the inhabitants of the municipalities of

Cape Town and Green-point, as are qualified to serve as members of such a force: And whereas it is expedient to make such provisions:—Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the commissioners of the said municipalities respectively shall forthwith, from the returns, to be by them obtained from the several wardmasters, or otherwise, as shall best save time and secure accuracy, frame and deliver to the Civil Commissioner of the Cape Division a list of all the inhabitants of the said municipalities respectively, between the ages of sixteen and sixty years, capable of bearing arms for military operations, which list shall be classified, so as to show separately, first the number of such inhabitants between the ages of sixteen and thirty years; secondly, the number between the ages of thirty and forty-five years; and thirdly, the number between the ages of forty-five and sixty years.

Municipal Commissioners to frame, and deliver to Civil Commissioner of Cape Division, classified Lists of Inhabitants between 16 and 60 years.

2. And be it enacted, that it shall and may be lawful for such Civil Commissioner, upon cause shown, to correct any error which may have occurred in the framing of such list, by erasing therefrom the name of any person below the age of sixteen, or above the age of sixty, or incapable of bearing arms as aforesaid, or by removing the name of any person from one class, in regard of age, to another class; or by adding, in its proper class, the name of any person, who may, by inadvertence or otherwise, have been left out of such list. Provided always, that when and as often as any question touching the capability of any inhabitant to bear arms shall arise, the Civil Commissioner shall, in deciding the same, be assisted by the medical committee, or such members of the same as may by Government be deputed for that purpose.

Civil Commissioner to correct Lists.

And in claims to exception on account physical inability to be assisted by medical committee.

3. And be it enacted, that the said Civil Commissioner, in calling out from the three classes aforesaid, or any of them, such a number of the said inhabitants as shall be deemed requisite to serve as members of the said force, shall conform himself to the order of selection laid down for the regulations of the country districts of this colony, save and except only that no regard shall in any case be had to the comparatively greater or lesser extent or importance of the business or occupation in which certain inhabitants may be supposed to be engaged, nor shall any inhabitant be either exempted or selected by reference thereto.

In selecting inhabitants for service civil commissioners to be guided by the regulations for country districts, but no regard to be had to occupation of such inhabitants.

4. And be it enacted, that in case it shall be found that there remain in, or belong to, any one of the classes aforesaid, as being disentitled to claim exemption from

If list of class contain more names than required for service,

number to be chosen by lot.

service, a number of inhabitants greater than it shall be judged necessary to call out from such class, the number of inhabitants of such class which it shall be judged necessary to call out shall be chosen by the Civil Commissioner aforesaid, from the greater number aforesaid, by lot, and so, from time to time, as fresh levies shall be made or called for.

Every inhabitant so chosen, must enrol himself and serve, or in default be subjected to penalties of Ordinance No. 19, 1846;

5. And be it enacted, that every inhabitant aforesaid, who shall be chosen by lot as aforesaid, for the performance of Burgher Duty, shall be bound to enrol himself, and serve as a member of the Burgher Force of the Cape Division; and if any such inhabitant shall without just cause refuse or neglect so to do, when thereto required, either verbally or in writing, by the said Civil Commissioner, or by any commissioner or wardmaster of the municipality in which such inhabitant resides, he shall suffer the pains and penalties by the Ordinance No. 19, 1846, entituled "Ordinance for securing the due performance of Burgher Duty," imposed upon the inhabitant refusing or neglecting as therein mentioned: Provided always, that any such inhabitant who shall produce as his substitute another person between the ages of sixteen and sixty years, capable of bearing arms, who shall be ready and willing to enrol himself and serve, shall be deemed and taken to have himself personally served; and provided further, that if any person serving as a substitute shall, at any time, be himself drawn to serve as a member of the Force aforesaid, the inhabitant whose substitute he was, shall be bound to enrol himself and serve in his room and stead, unless a fresh substitute shall be produced, ready and willing so to do, which fresh substitute shall be deemed to serve in the room and stead of the inhabitant whose first or other substitute was so as aforesaid drawn to serve.

but may provide a substitute;

and if substitute be himself drawn, another to be provided, or party obliged to serve.

Volunteers or Burghers required to serve in other divisions, not to be included in such lists.

6. And be it enacted, that every inhabitant in actual service as a member of any volunteer corps or force, or otherwise, shall be deemed and taken to be exempted from the operation of this Ordinance; and no such inhabitant, nor any inhabitant who shall be already required to perform Burgher Duty by reason of residence or property situated elsewhere than within the municipalities aforesaid, or either of them, shall be included or contained in the list aforesaid: Provided always, that in case any inhabitant in actual service should become the substitute of any other inhabitant under and by virtue of the provision in that behalf in the next succeeding section contained, the name of such inhabitant so becoming such substitute, shall thereupon be added to the list aforesaid, in the same manner as if such person had never served.

Volunteers becoming substitutes excepted.

7. And be it enacted, that it shall and may be lawful for any inhabitant of either of the Municipalities aforesaid, chosen by lot as aforesaid, for the performance of Burgher Duty, to provide as his substitute any member of his own household serving as a volunteer, who shall signify his consent to become such substitute. Burghers chosen may substitute volunteers if belonging to their own households.

8. And be it enacted, that the several Wardmasters of the Municipalities aforesaid respectively shall, in regard to the enrolling, assembling, and embodying of the Burgher Force thereof, and all other matters touching and concerning the same, be deemed and taken to be invested with all the powers, and be subject to all the duties, which Field-cornets in the country districts are invested with or subject to, in regard to the Burgher Force thereof; and that such Wardmasters shall stand in the same relation to the Civil Commissioner aforesaid, as do the several Field-cornets of the Division of the Cape. Wardmasters to have same powers as field-cornets.

9. And be enacted, that it shall and may be lawful for the Commissioners of the said Municipalities, to nominate and appoint forthwith as many fit and proper persons as they shall deem necessary, or expedient, to be and act as special Wardmasters for the purposes of this Ordinance, and such appointments from time to time to cancel and annul; and every such special Wardmaster shall, during the continuance of his appointment, be deemed and taken, for the objects and purposes of this Ordinance, to possess all the powers, and to be subject to all the duties, of Wardmasters regularly elected. Commissioners of municipalities may appoint special ward-masters for purposes of this Ordinance.

10. And be it enacted and declared, that all laws and customs heretofore in force in the country districts of this Colony, touching and concerning the enrolling, assembling, embodying, conducting, equipping, and supplying of the Burgher Force, and which are not repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be in full force and effect within the Municipalities aforesaid respectively. Regulations of country districts in regard to burgher force extended to Cape Town and Green-point.

11. And be it enacted, that the term Civil Commissioner, as often as the same occurs in this Ordinance, shall be deemed and taken to extend to and embrace the officer acting as such; and also, any person by such officer deputed, by any writing under his hand, to perform any one or more of the duties or functions by this Ordinance directed to be performed by such Civil Commissioner. Explanation of terms.

12. And be it enacted, that this Ordinance shall commence from and after the date of the promulgation thereof, and shall continue in force until the First day of August, in the year of our Lord 1846, and no longer. Commencement and continuation of Ordinance.

No. 21,—1846.] ORDINANCE [Sept. 24, 1846.

For Amending the Law relating to the Rights of Execution Creditors within the District of Natal.

Ord. No. 3, 1844, extended to Natal.

WHEREAS it is expedient to extend the Provisions of the Ordinance No. 3, 1844, entituled "Ordinance for amending the Law relating to the Rights of Execution Creditors," to the District of Natal: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the clauses and provisions of the said Ordinance shall be deemed and taken to extend and apply to, and to be in force within, the District of Natal, precisely as if the said clauses and provisions were herein again set forth as parts or portions of this Ordinance, and applied to the said District, in manner and form as the same are, in and by the said Ordinance No. 3, 1844, applied to this Colony.

Commencement of this Ordinance.

2. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any Proclamation to be by the Lieutenant Governor of the District aforesaid, for that purpose, issued, and posted upon or affixed to any public place in the town of Pietermaritzburg.

No. 22,—1846.] ORDINANCE [Sept. 24, 1846.

For Punishing the Concealment of the Birth of Children within the District of Natal.

Preamble.

WHEREAS it is expedient to extend the provisions of the Ordinance No. 10, 1845, entituled "Ordinance for Punishing the Concealment of the Birth of Children," to the District of Natal: Be it thererore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the clauses and provisions of the said Ordinance shall be deemed and taken to extend and apply to, and to be in force within, the District of Natal, precisely as if the said clauses and provisions were herein again set forth, as parts or portions of this Ordinance, and applied to the said District in manner and form as the same are, in and by the said Ordinance No. 10, 1845, applied to this Colony.

Ord. No. 10, 1845, extended to Natal.

Commencement of this Ordinance.

2. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation to be by the Lieutenant Governor of the District aforesaid, for that purpose issued, and posted upon or affixed to, any public place in the town of Pietermauritzburg.

No. 23,—1846.] ORDINANCE Sept. 24, 1846.

For Licensing Retail Shops within the District of Natal.

Preamble.

WHEREAS it is expedient that all persons keeping shops, commonly called retail shops, within the District of Natal, should take out licences authorizing the keeping of the same, of the same amount as similar licences in those parts of the colony other than the District of Natal: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that no person shall, from and after the 1st day of January 1847, keep any such shop as aforesaid within the District of Natal, without having taken out an annual licence for the privilege of so doing, for which licence there shall be paid and payable to the treasurer of the said district the sum of one pound and ten shillings; and any person who shall keep any such shop as aforesaid, within the said district, without having taken out the said licence as by law required, shall forfeit, for every such offence, any sum not exceeding £5, and not less than £1.

From 1st of January 1847, Retail Shops be Licensed.

Penalty.

Licence to be for 12 months.

2. And be it enacted, that every such licence as aforesaid shall commence from, and continue in force for, twelve months after the 1st of January in each and every year.

How Licences to be obtained.

3. And be it enacted, that it shall and may be lawful for the Lieutenant Governor of the said district, or the Officer for the time being administering the Government thereof, and he is hereby required, to nominate and appoint, on or before the 1st of December next ensuing, such person, or so many persons, as he shall deem fit and necessary, who shall be authorized and required to issue such licences as aforesaid, and the name of every such person shall be announced for general information by Proclamation to be issued for that purpose, and posted upon or affixed to some public place in the town of Pietermaritzburg.

Commencement of this Ordinance.

4. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation, to be by the Lieutenant Governor, or other Officer aforesaid, for that purpose issued, and posted or affixed in manner and form as in the last preceding section mentioned.

No. 24,—1846.] ORDINANCE [Sept. 21, 1846.

For Regulating the due Collection, Administration, and Distribution of Insolvent Estates within the District of Natal.

Preamble.

WHEREAS it is expedient to make provision for the due Collection, Administration, and Distribution of the Estates of Insolvent Persons within the District of Natal: And whereas such provision may most fitly and conveniently be made by extending to the said District the provisions of the Ordinance No. 6, 1843, entituled "Ordinance for regulating the due Collection, Administration, and Distribution of Insolvent Estates within this Colony;" or such and so many of the said provisions as shall be applicable to the circumstances of the said district, with such changes and modifications, however, in certain particulars, as those circumstances require: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all laws and customs heretofore in force within the District of Natal, in so far as the same are repugnant to or inconsistent with any of the provisions of this Ordinance, shall be, and the same are hereby respectively repealed.

Repeal of Former Laws.

Ordinance No. 6, 1843, with certain modifications and exceptions, extended to Natal.

2. And be it enacted, that all and singular the clauses, provisions, and contents of the said Ordinance No. 6, 1843, except the preamble thereof, and the provision thereof repealing certain former ordinances, publications, laws, and customs before then in force within this colony; and except also the 115th, 133d, 134th, 137th, and 139th sections thereof, shall, under and subject to the several changes, modifications, and adaptations hereinafter contained, be deemed and taken to extend, and apply to, and to be in force within, the District of Natal, precisely as if the said clauses, provisions, and contents, so changed, modified, and adapted, were herein again set forth, as parts or portions of this Ordinance.

Interpretation Clause.

3 And be it enacted, that when and as often as the words "this colony" occur in the said Ordinance No. 6, 1843, they shall be deemed and taken to mean, for the purpose of this Ordinance, the District of Natal; and the words "supreme court" and "circuit court," shall be deemed and taken to mean respectively the District Court of Natal; and the words "chief justice," "chief justice of the colony," "any of the judges of the supreme court," or "one of the judges of the supreme court," shall respectively be deemed and taken to mean the Recorder of the District of Natal; and the words "master of the

supreme court," shall be deemed and taken to mean the Registrar of the District Court of Natal, or such other officer or person as may, from time to time, be appointed by the Lieutenant Governor of the said district, or the officer for the time being administering the Government thereof, to perform the duties by the said Ordinance assigned to and imposed upon the Master of the Supreme Court; and the words "sheriff of this colony at his office in Cape Town," shall be deemed and taken to mean the Sheriff of the said district, or the officer or person appointed to perform the duty of Sheriff in and for the said district, at his office in Pietermaritzburg, or wherever else it may be situated; and the words "deputy sheriff of that district" shall be deemed and taken to mean any Deputy Sheriff who may be hereafter duly appointed to act in and for any allotted portion or subdivision of the District of Natal; and the words "Government Gazette," and "Government Gazette of this Colony," shall be deemed and taken to mean respectively any newspaper, or other publication, issued within the District of Natal, which shall, for the time being, be selected and appointed by the Lieutenant Governor thereof, for the insertion and publication of Government proclamations and notices,—and failing such appointment every notice, summons, matter, or thing, by the said Ordinance required to be inserted in the *Government Gazette*, shall be published or posted in such manner as the said Lieutenant Governor shall, by any proclamation to be by him from time to time issued, and posted upon, or affixed to, some public place in Pietermaritzburg, order and direct; which publication or posting shall have the same effect as an insertion in the *Government Gazette*; and the words "courts of the resident magistrates of this colony," and "resident magistrates of this colony," respectively, shall be deemed and taken to mean such courts and magistrates, respectively, as may, at any time, possess and exercise the same or similar powers and functions in regard to the District of Natal or to any portions or subdivisions of the said district, as are now, or shall from time to time, be possessed and exercised by the existing resident magistrates of this colony in their respective districts; and the words "Cape Town," and "any district of the colony other than the Cape District," as they occur in the 26th and 57th sections of the said Ordinance, respectively, shall respectively be deemed and taken to mean the Town of Pietermaritzburg, and any portion or subdivision of the District of Natal, which shall not include the said town, and in or for which a resident magistrate, or similar functionary

shall be created: Provided always, however, and be it enacted, that it shall and may be lawful for the registrar or other person aforesaid, whether the said district shall be divided into portions or subdivisions with resident magistrates or similar functionaries therein or not, to preside at any meeting of creditors at which he shall be present wherever such meeting shall be holden."

Operation of the 100th and 101st Sections of Ordinance No. 6, 1843, postponed.

4. And whereas, owing to the non-existence as yet within the said district of any bank with which Trustees of Insolvent Estates could open accounts, and into which they could pay any monies belonging to the said estates, the provisions of the 100th and 101st sections of the Ordinance aforesaid cannot be immediately applied: Be it therefore enacted, that until the establishment of some joint stock bank within the said district, the creditors shall, if they think fit, at the meeting in the said 100th section mentioned, give, in manner and form as in the said section specified in regard to the nomination and appointment of a bank or banks, such special instructions to the trustees touching the custody and security of the monies belonging to the insolvent estate as shall be deemed expedient, with which instructions it shall, under the penalties in the 101st section provided, be incumbent on such trustees to comply. Provided, however, that in case no such special instructions are given, the trustees shall be entitled to retain all such monies in their own hands till the distribution thereof, provided they shall not employ the same for their own benefit. And provided also that when and as soon as one or more joint stock bank or banks shall be established within the said district, the provisions in the said 100th and 101st sections contained shall come into full force and operation.

Unclaimed Dividends, how to be disposed of.

5. And be it enacted, that all unclaimed dividends, as in the 115th section of the said Ordinance mentioned, shall be paid into whatever fund may at any time hereafter be established within the District of Natal of the same nature as the guardian fund in the said section mentioned, to the credit of the parties entitled, there to be subject to the same provisions in all respects as shall be provided by the rules and regulations of such fund as aforesaid, in regard to monies placed therein belonging to persons absent from the district. Provided always, that it shall and may be lawful for any trustee or trustees, until such a fund as aforesaid shall have been established, to retain the custody of all unclaimed dividends for account of the persons thereto entitled.

Commencement of this Ordinance.

6. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be

fixed and appointed for the commencement thereof, by any proclamation to be by the Lieutenant Governor of the district aforesaid, for that purpose, issued and posted upon or affixed to some public place in the town of Pietermaritzburg.

No. 25,—1846.] ORDINANCE [Sept. 24, 1846

For regulating the payment of the expenses of Witnesses attending to give evidence on criminal trials and preparatory examinations within the district of Natal.

Preamble.

WHEREAS it is necessary that provision should be made for the payment of the expenses of witnesses attending to give evidence in criminal cases within the district of Natal; and, for that purpose, it is expedient that the provisions of Ordinance No. 59, entitled "Ordinance for regulating the payment of the expenses of witnesses attending to give evidence on criminal trials and preparatory examinations," should, in substance, be extended to the said district:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the clauses and provisions of the said lastmentioned Ordinance shall, under and subject to the certain modifications, and adaptations, hereinafter contained, be deemed and taken to extend, and apply to, and to be in force within, the District of Natal, precisely as if the said clauses and provisions, so modified and adapted, were herein again set forth as parts or portions of this Ordinance.

Ordinance No. 59, under certain modifications, extended to Natal.

Interpretation Clause.

2. And be it enacted that, in the interpretation of the said Ordinance, for the purpose of this Ordinance, the words "Supreme or Circuit Court" shall be deemed and taken to mean the District Court of Natal; and that the words "Clerk of the Peace," shall be deemed and taken to mean such officer or person as shall, by the Lieut.-Governor of the said District, be appointed to discharge the duty by the said Ordinance imposed upon the Clerk of the Peace; and that the cheque in the 6th Section of the said Ordinance mentioned shall be drawn upon the Treasurer of the said district, or such person or persons as the said Lieut.-Governor shall, from time to time, find it expedient to appoint.

Commencement of this Ordinance.

3. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation to be by the Lieut.-Governor aforesaid for that purpose issued, and posted upon, or affixed to, some public place in the town of Pietermaritzburg.

No. 26,—1846.] ORDINANCE [Sept. 24, 1846.

For preventing the mischiefs arising from the Printing and Publishing, within the District of Natal, of Newspapers, and Papers of a like nature, by persons not known, and for regulating the printing and publication of such Papers, in other respects; and also for restraining the abuses arising from the Publication in the said District of Blasphemous and Sedicious Libels.

Preamble.

WHEREAS it is expedient to extend to the District of Natal, but with certain amendments, modifications, and adaptations, the provisions of the Ordinance No. 60, made and passed in 1829, entituled Ordinance "For preventing the mischiefs arising from the printing and publishing newspapers, and papers of a like nature, by persons not known, and for regulating the printing and publication of such papers in other respects: and also for restraining the abuses arising from the publication of blasphemous and seditious libels:"—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all and singular the clauses and provisions of the said lastmentioned Ordinance, except the last Section thereof, shall, under and subject to the several amendments, modifications and adaptations hereinafter contained, be deemed and taken to extend and apply to, and to be in force within, the District of Natal, precisely as if the said clauses and provisions, so amended, modified, and adapted, were herein again set forth as parts or portions of this Ordinance.

Ordinanee No. 60, under certain modifications, extended to Natal.

Interpretation Clause.

2. And be it enacted that when and as often as the words "this Colony" occur in the said Ordinance No. 60, they shall be deemed and taken to mean, for the purpose of this Ordinance, the District of Natal; and the words "Colonial Secretary," and "Acting Colonial Secretary," shall respectively be deemed and taken to mean the Secretary to Government at Natal, or the officer for the time being acting as such; and the words "Governor," and "Governor of this Colony," shall respectively be deemed and taken to mean the Lieutenant Governor of the District aforesaid, or the officer for the time being administering the Government thereof; and the words "one of the Judges of the Supreme Court," shall be deemed and taken to mean the Recorder of the District of Natal; and the words "Supreme Court," shall be deemed and taken to mean the District Court of Natal; and the words "Government of this Colony," shall be deemed and taken to mean the local executive Government of the said District;

and the words "our Sovereign Lord the King, His Heirs and Successors," shall be deemed and taken to mean our Sovereign Lady the Queen, Her Heirs and Successors.

Declaration substituted for Affidavit in the 7th section of Ordinance No. 60.

3. And be it enacted that in place and stead of the certain affidavit in the said Ordinance No. 60 mentioned, there shall, for the purpose of this Ordinance, be made and subscribed a solemn declaration to the same effect, and the 7th Section of the said Ordinance shall be taken and construed as if the term "Declaration," were substituted for the term "Affidavit," as often as such lastmentioned term occurs therein.

Commencement of this Ordinance.

4. And be it enacted that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation to be by the Lieut. Governor of the District of Natal for that purpose issued, and posted upon or affixed to any public place in the town of Pietermaritzburg.

No. 27,—1846.] ORDINANCE [Oct. 3, 1846.

For amending the Law relative to Conventional Hypothecations.

Preamble.

WHEREAS it is found that parties to whom, or in whose favor, mortgages or hypothecations, as well general as special, have been passed, sometimes abstain from registering the same against their debtors, until the increasing embarrassments of such debtors, or other reasons, render it necessary to secure a preference over other creditors, who may have dealt with such debtors in total ignorance that any such mortgages or hypothecations were in existence: And whereas such a practice may be used so as to cover fraud, and is one which tends to defeat the objects or limit the advantages of the debt registry of this colony, and which should therefore be suppressed:—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that

General Bonds when to be registered.

every deed or instrument of mortgage or hypothecation, commonly called a general bond, executed after the commencement and taking effect of this Ordinance, shall, if executed by the debtor or mortgager within the limits of the municipality of Cape Town, be tendered for registration in the Deeds' Registry Office within the space of seven days next after the day of the execution thereof; and if so executed elsewhere within the limits of the

If in Western Districts.

Western Division of this Colony, shall be tendered as aforesaid within the space of fourteen days next after such execution as aforesaid; and if so executed within the

If in Eastern Districts.

limits of any of the Eastern Districts, shall be tendered as aforesaid within the space of twenty-eight days next after such execution as aforesaid; and no such deed or instrument which shall be tendered for registration after the expiration of the term hereinbefore limited for the tendering of the same shall be (except as in the next succeeding section is excepted) registered, and if registered, such registration shall be null and void. Provided always, that nothing in this Ordinance contained shall be deemed or taken to extend to any deed or instrument executed elsewhere than in any of the places aforesaid, nor to deprive any deed or instrument executed within any of the said places of any force or effect which, though unregistered, it may by law possess. Provided also that nothing in this Ordinance contained shall be construed so as to entitle any instrument to be registered, which instrument would not by law be now entitled to registration.

Judge may order Registration when delay is not through fraud or neglect.

2. And be it enacted, that if, in any case, the occurrence of peculiar circumstances shall prevent any such deed or instrument as aforesaid, which should have been tendered for registration within some one of the certain times or spaces aforesaid, from being so tendered, it shall and may be lawful for any person whom it shall concern to apply to any Judge of the Supreme Court for an order directing the Registrar of Deeds to register the said deed or instrument, notwithstanding the time or space aforesaid shall have elapsed,—and such judge, upon being satisfied by the person applying, that the delay has not arisen from fraud or neglect, may, should he think fit, make such order; and thereupon the Registrar of Deeds shall register such deed or instrument, and such registration and the effect thereof shall be taken and judged of precisely as if this Ordinance never had been passed.

Date of execution of Bond to appear.

3. And be it enacted, that every such deed or instrument as aforesaid, executed as aforesaid within any of the places aforesaid, shall, in some part or portion thereof, set forth the date and place of the execution thereof; and if any notary public or any other person whomsoever, shall knowingly and wilfully insert or set forth in any such deed or instrument, any false or erroneous date or place, such notary public, or other person, shall for such offence forfeit any sum not exceeding £100, and not less than £10, to be recovered for his own use with costs of suit, by any person suing in any competent court for the recovery of the same.

False date—Penalty.

Express words needed to cover future advances.

4. And whereas it is expedient that notice, as particular as possible, should be given upon the face of every deed or instrument of hypothecation, of the amount which

such hypothecation is intended to secure, and whereas as often as such deeds or instruments are framed so as to cover or secure future debts or advances to an indefinite amount, no such notice is conveyed, and inconveniences may thence result; and whereas it is expedient to amend the law in this respect:—Be it enacted, that no deed or instrument of hypothecation, whether general or special, executed at any time after the commencement and taking effect of this Ordinance, shall be of any force or effect to give any preference or priority to the payment of any advances, debts, or demands, made or accruing after the date of the registration of such deed or instrument, unless it shall be expressed in such deed or instrument, that the same is meant or intended to cover or secure future advances, debts, or demands generally, or some particular description thereof to be in the said deed or instrument described, and unless also some certain sum shall be expressed in such deed or instrument as a sum beyond which such future advances, debts, or demands, shall not be deemed to be covered or secured by the hypothecation made or created by such deed or instrument;—Provided always, that nothing herein contained shall be construed so as to give validity or effect to any deed or instrument, or any part of any deed or instrument, which before this Ordinance would have been invalid, or ineffectual.

A maximum sum to be inserted.

5. And be it enacted, that every such Deed or Instrument as aforesaid, which shall have been executed before, but shall remain unregistered upon the day of the commencement and taking effect of this Ordinance, shall be tendered for registration within the space of one month next after such day, and if not so tendered shall not be registered; or if registered, such registration shall be null and void. Provided always, that the provisions in the second section of this Ordinance contained shall apply to every such last-mentioned Deed or Instrument, when and as often as the occurrence of peculiar circumstances shall prevent the same from being tendered for registration within the said space of one month.

Bonds now outstanding to be registered within one month.

Exception.

6. And be it enacted that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance not to extend to Natal.

7. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

Ordinance when to take effect.

For preventing the mischief arising from the cutting, rooting-up, and destroying of Trees, Shrubs, and Bushes, growing on the Cape Flats and Downs.

Preamble.

WHEREAS it has become an object of the utmost importance to this Colony, to preserve from the effects of drifting sands the new hard road constructed over or across the Cape Flats or Downs: and whereas a mischievous and illegal practice prevails of cutting down, rooting-up, and carrying away from the said Flats or Downs, for the purpose of firewood, the trees, shrubs, or bushes growing there, by means of which practice the sands are loosened and exposed, and are carried by the wind to, and deposited upon, the said road, to the serious detriment, if not total destruction, of certain parts thereof: And whereas no efforts made, or to be made, by the Central Board of Commissioners of Public Roads, to bind and fix those portions of the said Flats or Downs, from which the sands are carried, by causing them to be planted with trees, shrubs, bushes, or other vegetable productions, have been, or can be, of any avail, so long as the mischievous and illegal practice aforesaid shall be permitted to continue; And whereas, in order as much as may be to suppress the said practice, and protect the road aforesaid, it is expedient to amend the law relative to the removal of trees, shrubs, and bushes from the said Flats or Downs:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the 3rd and 4th sections of Ordinance No. 5, 1836, entituled "Ordinance for defining the limits of, and securing from injury, the Cape Flats and Downs," shall be repealed, and the same are hereby repealed accordingly.

Repeal of certain sections of Ordinance 5, 1836.

No person (travellers excepted) &c., to take up &c., tree, bush, &c. growing upon Crown Lands within the Downs.

2. And be it enacted, that if any person (except persons travelling as hereafter is excepted) shall cut, root up, burn, break, destroy, or carry away any tree, shrub, or bush growing upon any part of the crown lands, situate within the Cape Downs or Flats,—or shall engage or employ any other person so to do (whether such last-mentioned person shall actually do so or not); or shall take upon himself to sell or dispose of, or authorize to be carried away, any such tree, shrub, or bush,—such person shall, upon the first conviction for the said offence, forfeit any sum not exceeding £5; and upon non-payment thereof, shall be imprisoned for any term not exceeding one month: and upon a second conviction for the said offence, shall forfeit any sum not exceeding £10, and not less than £5; and upon non-payment thereof, shall be imprisoned

Penalties.

for any term not exceeding three months, and not less than one month; and upon a third, or any subsequent conviction for the said offence, shall forfeit any sum not exceeding £20, and not less than £10, and upon non-payment thereof shall be imprisoned for any term not exceeding six months, and not less than three months. Provided always, that every such imprisonment as aforesaid shall be with hard labor, unless the magistrate committing shall otherwise award. And provided also, that every person travelling through or over the Flats or Downs aforesaid shall be at liberty, without incurring any of the penalties or forfeitures aforesaid, to cut down and collect such trees, shrubs, or bushes, as shall be needed for the purpose of any fire, which such person shall require or desire to kindle or keep at any outspan place within the said Flats or Downs,—such person doing no unnecessary damage in the cutting or collection of the same.

Imprisonment to be with hard labour, unless otherwise expressed.

Privilege of travellers.

3. And be it enacted, that every person, being the owner, lessee, or other occupant of any land being private property, situate, wholly or in part, within the said Flats or Downs, who shall deliver to, or permit to be carried away upon, any wagon, cart, or other carriage, any trees, shrubs, or bushes, which shall have grown upon such private property, shall grant and deliver to the person in charge of such wagon, cart, or other carriage, a certificate or note in writing, signed by such owner, lessee, or other occupant, certifying in substance, that the trees, shrubs, or bushes carried in or upon such wagon, cart, or other carriage, have been obtained from the person signing the same; and every owner, lessee, or occupant who shall neglect to give such certificate or note in writing to the person in charge of every wagon, cart, or other carriage carrying away, with his knowledge and consent, any such trees, shrubs, or bushes as aforesaid, shall for every such neglect forfeit any sum not exceeding twenty shillings.

Bush, &c., sent from private property, to be accompanied by certificate of owner.

Such certificate being wanting—Penalty.

4. And be it enacted, that no person, being the owner, lessee, or other occupant of any land being private property, situate wholly or in part within the said Flats or Downs, and lying to the westward of an invisible line supposed to be drawn from the beach of Table Bay, at the point where a line drawn due west from Duiker Vallei would touch the said beach to the said Duiker Vallei, thence to the 7th milestone on the hard road across the Flats, thence to Jackal's Vallei, thence to the house commonly called Mannenberg's, thence to the Vaderlandsche Riet Vallei, thence to the northern end of Zeekoe Vallei, thence to the southern end of Zeekoe Vallei, and thence in a straight line due south to the beach of False Bay, shall

Owners of private property within certain limits of said Downs, not to dispose of any bush, &c. therefrom, unless licensed by Civil Commissioner.

deliver or permit to be carried away in or upon any wagon, cart, or other carriage, any trees, shrubs, or bushes having grown upon such private property, without having previously obtained a licence, in writing, from the Civil Commissioner of the Cape Division, or officer acting as such, authorising him to remove the trees, shrubs, or bushes growing upon such private property. And any such owner, lessee, or occupant as is in this section mentioned, who shall, without having obtained such licence, permit any trees, shrubs, or bushes to be carried away, in or upon any wagon, cart, or other carriage, shall, for every such offence, forfeit any sum, not exceeding forty shillings, and not less than £1; and upon non-payment thereof, shall be imprisoned for any term not exceeding one month.

Penalty.

Such licence to be granted in cases where removal of bush, &c., will not cause sand to drift.

5. And be it enacted, that the Civil Commissioner aforesaid shall, upon the application of any such owner, lessee, or occupant as is in the last preceding section mentioned, grant such licence as aforesaid as often as such civil commissioner shall be satisfied by inspection, or otherwise, that there are growing upon the private property in question trees, shrubs, or bushes, which might be removed without thereby loosening or exposing sands in such a manner as to occasion the drifting of the same. And every such licence shall be revocable by such civil commissioner and shall be by him revoked, whenever it shall appear that the said private property, and the trees, shrubs, or other bushes thereupon, are in such a condition, that the further removal of the latter would produce injurious consequences: Provided always, that every such licence may be framed in such a manner as to authorise the removal of such trees, shrubs, or bushes as aforesaid from a part or parts only of any private property, instead of the entire. And provided also, that when and as often as any owner, lessee, or other occupant, applying for such a licence as aforesaid, shall be wholly refused the same, or shall be allowed a licence covering a part or parts only of his property, it shall and may be lawful for such owner, lessee, or other occupant, to require compensation from the Central Board of Commissioners of Public Roads, for any losses which he may allege himself to have sustained, and thereupon such proceedings shall be had as if such claim were a claim of compensation preferred under and by virtue of the 10th section of Ordinance No. 8, 1843, entituled an "Ordinance for improving the Public Roads of this Colony."

When persons in charge of wagons, &c., may be held to have

6. And be it enacted, that when and as often as any wagon, cart, or other carriage, shall be found within or upon any part of the said Flats or Downs (not being pri-

vate property), or upon the said hard road, or any other road or place to which the said wagon, cart, or other carriage shall have come from any place eastward of the Salt River, having in or upon such wagon, cart, or other carriage, trees, shrubs, or bushes of a species or description commonly found growing on the said Flats or Downs, it shall and may be lawful for any person finding the same, to require the person in charge thereof to produce and show such a certificate or note in writing as aforesaid; and his refusal or neglect so to do shall be deemed and taken, for the purpose of the penalties by this Ordinance provided, to be conclusive evidence that the said trees, shrubs, or bushes were carried away by the person so neglecting or refusing, from crown land, as in the second section of this Ordinance mentioned, and thereupon such person may lawfully be required, and, if he shall refuse, may, if necessary, be forcibly compelled, to proceed forthwith to the nearest resident magistrate or road magistrate, there to be dealt with according to law, in the exercise of the jurisdiction hereinafter conferred. Provided always, that if it shall be proved to the satisfaction of such resident magistrate or road magistrate, that the certificate or note in writing by law required was really given, and received, and afterwards lost or mislaid, the person accused shall be acquitted, or if he shall have paid any fine imposed upon him previous to such proof being given, shall have the same returned to him, or if in prison by reason of default made in the payment of any such fine, shall be forthwith discharged by an order under the hand of the committing magistrate.

contravened 2d section of this Ordinance.

Exception.

7. And be it enacted, that the court of the resident magistrate of Cape Town and the District thereof, and the Cape District, and the court of the resident magistrate of the District of Wynberg, and the court of the judge and superintendent of police of Cape Town, shall respectively have jurisdiction to inquire into and determine all cases and questions of fines, forfeitures, or penalties by this Ordinance provided.

Certain courts to have jurisdiction.

8. And be it enacted, that every road magistrate resident within the division of the Cape shall have jurisdiction in regard to every offence in the second section of this Ordinance mentioned, whenever any wagon, cart, or other carriage shall be brought before him, under and by virtue of the sixth section of this Ordinance, and shall, in regard to the prosecution of any such offence, proceed in manner and form as by law would have been fit and proper, had such wagon, cart, or other carriage been brought before him, under and by virtue of the 20th section of Or-

Road Magistrates to have jurisdiction under 2d section in certain cases.

dinance No. 9, 1846, entituled "Ordinance for the better preservation of the public roads, and the prevention of accidents thereon," charged with having contravened any of the provisions of the 3d section of the said last-mentioned Ordinance.

Forgery, &c., of certificate, &c.

9. And be it enacted, that if any person shall forge or alter any such certificate or note in writing as aforesaid,—or if any person in charge of any wagon, cart, or other carriage shall knowingly produce and show as genuine any forged or altered certificate or note in writing as aforesaid, or any paper purporting to be such a certificate or note in writing as aforesaid, which shall not bear, and shall, by the person producing and showing the same, be known not to bear the signature of any person by the provisions of this Ordinance authorised and entitled to grant such a certificate or note in writing,—or if any person so authorised and entitled as last aforesaid, shall knowingly put or affix any wrong date to any such certificate or note in writing as aforesaid,—or if any such lastmentioned person shall deliver to any other person any such certificate or note in writing, save only for the use and protection of some wagon, cart, or other carriage then actually loaded with or loading, or about to load, the trees, shrubs, or bushes referred to in and intended to be protected by such certificate,—such person so offending, shall upon conviction of any such offence be liable to forfeit any sum not exceeding £20, and upon non-payment thereof shall be imprisoned for any term not exceeding six months.

Affixing wrong date, &c.

Penalty.

Ordinance when to take effect.

10. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 29,—1846.] ORDINANCE [Oct. 5, 1846.

For the better Regulation of the Sale of Wines, and Spirituous and Fermented Liquors.

Preamble.

WHEREAS it is expedient to amend and consolidate the laws now in force touching the sale of wines, malt liquors, and spirituous liquors in this colony: Be it therefore enacted that from and after the 1st day of January next ensuing, the Ordinance No. 93, entituled Ordinance "for granting licences to sell, and for the better regulation of the sale of, wines, spirituous liquors, malt liquors, ginger beer and spruce beer, and the Ordinance No. 94, entituled Ordinance "for fixing the quantities of wines and other liquors allowed to be sold under licence, and the stamp duties to be paid for licences, and for regulating certain

matters in regard to the making and selling of such liquors," shall be and the same are hereby repealed, save and except so far as the said Ordinances, or either of them, repealed any former law, Proclamation, or Ordinance, or any part thereof; or in so far as the said Ordinances, or either of them, relate to or concern the prosecuting, suing for, and recovering of, any duties agreed to be paid, or which are imposed by virtue of the said Ordinances, or either of them, which shall remain then due and unpaid; and save and except in so far as the said Ordinances, or either of them, relate to the recovering of any fine or penalty for any offence against either of the said Ordinances which shall have been, or shall be, committed before the said first day of January next, and shall remain then due and unpaid. Provided always that nothing in this section contained shall extend, or be construed to extend, to impair the validity of any licence which shall not have expired on the said 1st day of January next, which licence shall be judged of precisely as if this Ordinance never had been passed.

Ordinances Nos 93 & 94 repealed.

Except so far as they repeal former laws.

Or as respects unpaid duties, or fines.

Unexpired Licences protected.

2. And be it enacted, that it shall and may be lawful for the distributor of stamps in Cape Town, and the several distributors of stamps in the several districts of the colony respectively, and they are hereby required, to grant licences in manner and form as hereinafter provided, authorising the sale of wines, spirituous liquors, liqueurs, malt liquors, ginger beer, and spruce beer, to such persons residing within their respective districts as shall make such applications, and comply with such regulations, as are respectively hereinafter in that behalf mentioned and set forth.

Distributors of Stamps to grant licences.

3. And be it enacted, that every such licence as is in the last preceding section mentioned shall be either a wholesale licence or a retail licence.

Licence to be wholesale or retail.

4. And be it enacted, that the said licences respectively shall be in form corresponding with the forms thereof respectively in the schedule to this Ordinance in that behalf set forth.

Form of Licence.

5. And be it enacted that it shall and may be lawful for any person who shall or may take out a wholesale licence as aforesaid, to sell any of the liquors in the 2d section of this Ordinance mentioned, in any quantity not less than two gallons, imperial measure, if in cask, or than twelve reputed quart or twenty-four reputed pint bottles, if in bottle; and that it shall and may be lawful for any person who shall take out a retail licence, as aforesaid, to sell any of the said liquors in any quantity less than two gallons, imperial measure, if in cask, or less than twelve reputed quart or twenty-four reputed pint bottles, if in bottle.

Wholesale dealing—minimum quantity.

Retail Dealing—maximum quantity.

Cost of Licence.

6. And be it enacted, that all such licences, as aforesaid, whether wholesale or retail, shall be issuable for the periods, and be on stamped paper of the rates or values following, and none other, that is to say,—

If for a year.

For every such licence respectively to endure for one whole year £20 0 0

If for six months.

For every such licence respectively to endure for six months £11 0 0

If for 3 months.

For every such licence respectively to endure for three months .. .. .. £ 6 0 0

Wholesale Licences.

7. And be it enacted, that it shall and may be lawful for any person desirous of taking out such a wholesale licence as aforesaid, to apply for the same to the distributor of stamps hereinafter authorized and required to grant the same, who shall thereupon grant the same accordingly. Provided that every such distributor shall, with all convenient speed, transmit to the Colonial Office in Cape Town the name of every person receiving any such wholesale licence, the place or premises where the licensed dealing is to be carried on, and the date of the issuing of such licence, in order that such particulars may be published in the *Government Gazette*.

Distributor to make returns to Colonial Office.

Licence when necessary for lodging houses, &c.

8. And be it enacted, that lodging houses, club houses, eating houses, or other places of accommodation, entertainment, or refreshment, at which any of the liquors in the 2d section of this Ordinance mentioned are supplied on the premises to inmates or others, and charged or paid for either directly or indirectly, and as part of the board and lodging to be provided, or otherwise, shall, except as hereinafter is excepted, be treated and considered as houses or places requiring that the persons keeping the same respectively should take out the licence aforesaid for selling by retail. Provided always, that no person who shall receive or accommodate any boarder or lodger, or other inmate, for any period certain not less than one month, and who shall not supply to such boarder, lodger, or other inmate, any wines or spirituous or fermented liquors, other than those of the growth or manufacture of this colony, shall be required to take out any licence whatsoever.

In what cases not necessary.

Retail Licence—application to Resident Magistrate.

9. And be it enacted, that every person being desirous of taking out any such retail licence as aforesaid shall make an application in writing to the resident magistrate of the district in which he resides, setting forth the nature or description of licence required, and the place or premises where the calling or business to be authorized by such licence is intended to be carried on. And when and as often as any person shall apply for such retail licence, such person shall, in his said application, set forth whether he intends to keep an inn, hotel, or boarding house, or intends

Nature of business to be stated.

to sell liquors not to be drunk or consumed on the premises, or intends to keep a tap, canteen, or public house, or intends to carry any two or more of the said sorts or descriptions of trade or calling.

Magistrate to post notice of such applications.

10. And be it enacted, that as often as any resident magistrate shall receive any such application as in the last preceding section mentioned, from any person who shall state his intention to keep a tap, canteen, or public house, such resident magistrate shall affix, or cause to be affixed, in some conspicuous place, at or in his office, and at or on the gate or entrance of some place of public worship (if such there be within seven miles of the seat of magistracy) and at or on the gate or entrance of the public prison, a notice containing the name of the applicant, the description of the house or premises in which the calling or business aforesaid is intended to be carried on, and the day on which the question of the granting of such licence will come on before such resident magistrate for determination, and such notice shall be affixed for the space of thirty days at least next before the day last mentioned: and such resident magistrate shall also transmit with all convenient speed to the Colonial Office in Cape Town a copy of such notice for publication in the *Government Gazette*. Provided always, that the validity of no licence subsequently granted, shall be impeached by reason that any such notice as aforesaid shall not have been duly posted or published as herein directed.

At what places.

What such notice should set forth.

Want of notice not to impeach licence.

Magistrate to hear objections in open court.

11. And be it enacted, that upon the day appointed for the determination of the question of the granting of any such licence as aforesaid, the resident magistrate shall in open court proceed to determine the same; and shall hear the objections, if any, of any householder resident near the house or premises mentioned in the notice aforesaid, whether grounded on the character, misconduct, or unfitness of the applicant, unfitness or inconvenience of the place or premises, or number of previously licensed houses already in the neighbourhood; and such magistrate shall also hear what shall be urged by the applicant in answer to such objections; and shall, if necessary, administer an oath to the said parties, or either or any of them, or any other person who shall be deemed competent to give any evidence or information touching the matter in question, and shall grant or refuse the licences applied for as the circumstances of the case shall require.

May examine on oath.

No person can hold more than one licence for a tap, &c.

12. And be it enacted, that no person shall be allowed to take out more than one licence to authorize the keeping of a tap, canteen, or public house, and if any one person shall take out more than one such licence, every licence

Penalty.

taken out by such person shall be *ipso facto* null and void.

Certificate of licence.

13. And be it enacted, that when and as often as the resident magistrate shall see fit to grant any such licence as aforesaid to any person intending to keep a tap, canteen, or public house, or to authorise the sale of liquors not to be drunk or consumed on the premises; or to authorise the sale of liquors in any inn, hotel, or boarding house; such resident magistrate shall deliver to the person who shall have applied for the same a certificate, in the form in the schedule in this Ordinance in that behalf set forth; which certificate, when produced and delivered to the distributor of stamps, shall entitle the person named therein to receive the licence therein mentioned.

To be delivered to Distributor of Stamps.

Magistrate to register Certificates.

14. And be it enacted, that every resident magistrate shall keep or cause to be kept a register of all certificates granted by him, which shall show the date when the application was received, the name of the applicant, and the description of the trade or calling intended to be carried on; and in regard to applications for retail licence to keep a tap, canteen, or public house, such registry shall also show the date at which each notice was affixed, and each certificate granted or refused, as the case may be. And when such certificate shall be refused, such register shall set forth the ground or reason of such refusal.

And to enter reason for refusing such.

Applicant to produce certificate of two householders.

15. And be it enacted, that no resident magistrate shall grant any such certificate as aforesaid, in any case in which a retail licence for an inn, hotel, or boarding house, or to authorise the sale of liquors not to be drunk on the premises, shall be applied for, until there shall be produced and delivered to him a certificate, signed by at least two householders of good repute, residing in the same street with the place or premises mentioned in the application, or the street next adjoining (should the said place or premises be situated in any town or village, and where such place or premises shall be elsewhere situated, by two at least of the five householders nearest the same,) attesting their belief of the fitness of the applicant to obtain the licence which he seeks, and of the suitableness of the said place or premises for the calling or business intended to be carried on therein. And when and as often as a retail licence shall be applied for, to authorise the keeping of a tap, canteen, or public house, no such resident magistrate shall grant any such certificate as aforesaid until, in addition to the certificate of householders, already mentioned, he shall moreover receive a certificate in writing from the chief officer of the police of the town or district, in which the place or premises sought to be licensed is or are situated, recommending that the licence ap-

plied for shall be granted. Provided always, that whenever the police force nearest to such place or premises shall be under the direction or authority of such resident magistrate himself, no such certificate as the last mentioned shall be necessary; but the resident magistrate shall determine according to his own knowledge and information, the certificate of householders aforesaid, and the circumstances of the case.

Certificate from head of Police,—where necessary.

16. And be it enacted, that no person who shall have applied for and received a retail licence for the purpose of an inn, hotel, or boarding house, shall sell any liquors not to be drunk or consumed on the premises, or shall keep on the premises a tap, canteen or public house, under pain of forfeiting any sum not exceeding ten pounds; nor shall any person who shall have applied for and received a retail licence, to authorise the sale of liquors not to be drunk or consumed upon the premises, permit any liquors to be drunk or consumed on the premises, under the like penalty.

When liquors must be consumed on the premises.

Penalty if not.

When liquors must not be used on the premises —penalty.

17. And be it enacted, that as often as a retail licence shall have been granted to any person who shall have applied for the same for the purpose of keeping a tap, canteen, or public house, such person shall thereupon enter into a recognizance before the distributor of stamps, who is hereby authorised and empowered to take the same, in the sum of £50 sterling, with two sufficient sureties in the sum of £25 sterling each, which recognizance, with the condition thereof, shall be in the form in that behalf prescribed in the schedule to this Ordinance; and in case the person applying for such licence shall be hindered through sickness, infirmity, or other reasonable cause, to attend in person for the purpose of entering into such recognizance, it shall and may be lawful for the person aforesaid, empowered to grant such licences, to permit two sufficient sureties to enter into such recognizance, each surety in the penalty of £50 sterling, for performance of the conditions of the said recognizance; and which said recognizance shall be acknowledged in the presence of and signed by the distributor of stamps taking the same; and the same, with the condition thereof, shall be sent to the resident magistrate of the jurisdiction, to be by him duly entered and recorded; and that for every such licence granted without such recognizance, and for every such recognizance taken and not sent as aforesaid, the distributor of stamps signing such licence shall incur and be liable to the payment of a fine not exceeding *fifty pounds* sterling.

Recognizance,—Form.

Neglect &c., by Distributor of Stamps—Penalty.

18. And be it enacted, that every licence which shall be found to have been fraudulently obtained shall be null and void; and any person who shall forge or counterfeit any

Fraudulent licences, &c.

licence or certificate, or write any name on any such licence to resemble, imitate, or represent the name of any magistrate, or other person empowered to grant the same, or shall tender, or produce any paper with such counterfeit name or writing therein, knowing such name or writing to be counterfeit, or shall take and receive any sum of money for signing or procuring counterfeit signatures to such licences or certificates, every person so offending, being lawfully convicted thereof, shall incur and be liable to a fine of £100 sterling, and shall also, upon prosecution and conviction, suffer such pains and penalties as by the laws of this colony are or may be hereafter imposed upon persons convicted of forgeries and frauds of this or the like nature.

Penalty.

Selling without licence, &c.

19. And be it enacted, that any person who shall sell any of the liquors aforesaid, by wholesale or retail, without having obtained a wholesale or retail licence, respectively, or who, having obtained such licence, shall sell any such liquors excepting on the premises mentioned in his licence, shall incur and be liable to the pains and penalties imposed upon persons convicted of selling such liquors without a licence. Provided always, that any licensed keeper of any inn, hotel, boarding house, tap, canteen, or public house, who shall be desirous to expose for sale and sell any of the liquors aforesaid at any place of public amusement or resort, may apply to the resident magistrate of the district for permission in writing so to do, and such magistrate may, should he see cause, grant such permission, and thereupon such sale shall become and be duly authorised and legal.

When sales may be made at other than place licensed.

Certain public officers may sell without licence.

20. And be it enacted, that nothing in this Ordinance contained shall extend, or be construed to extend, to require a licence for the sale of any of the liquors aforesaid made by any sheriff or other officer acting under the authority of any court, judge or magistrate.

Wholesale dealers may store in other than places licensed.

21. And be it enacted, that nothing in this Ordinance contained shall prevent, or be construed to prevent, any dealer in the liquors aforesaid, to whom a wholesale licence shall have been granted, to keep or store any of the liquors aforesaid in any number of stores or places, provided that no one of such stores or places be distant from any other of such stores or places more than two miles, and that the description of all such places be entered in the licence; otherwise such dealer shall incur and be liable to the pains and penalties imposed upon persons convicted of selling without a licence; provided, however, that persons in partnership, and carrying on business under one firm and in one house or shop only, and proving such partnership,

Such place to be described in licence.

Partners in Trade—separate licences not required.

shall not be required to take out more than one licence for such house or shop,

Licensed places—names of dealers and notice of licence, how to be affixed.

22. And be it enacted, that every person, having obtained any wholesale or retail licence as aforesaid, shall, except as hereinafter excepted, cause to be affixed on some conspicuous place on the outside of, and over the door of, his house, shop, store, or stores, a board, on which, or on the wall over the door or doors of the building, shall be painted in letters publicly visible and legible, at least two inches long, his name at full length (or, where there are partners, the name or style of the firm or partnership,) and after such name or style, the words *licensed dealer, or dealer in wines, malt liquors, and spirituous liquors, by wholesale or retail*, (as the case may be) and shall keep up such board or sign in good condition during the continuance of such licence; and in default of fixing such board or sign, or keeping the same in manner as aforesaid, shall incur and be liable to the payment of a penalty not exceeding *five pounds* sterling; and in case the whole amount of the penalty imposed, and of the costs and expenses, be not paid within three days after conviction, to imprisonment not exceeding one month, and not less than one week, unless the penalty, costs, and expenses be sooner paid. But nothing in this Ordinance contained shall be construed so as to require any board to be affixed in regard to any inn, hotel, or boarding house.

Penalty.

Exceptions.

If unlicensed person affix such notice.

23. And be it enacted, that every person who shall not have obtained any such licence as aforesaid, who shall affix any such board as aforesaid, before or on his house, shop, or store, or who shall paint or give any notice, importing that he is a dealer in the liquors aforesaid, or any of them, shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of selling any of the liquors aforesaid without a licence.

Penalty.

Who may enter premises and require sight of licence.

24. And be it enacted, that it shall and may be lawful for all resident magistrates, and justices of the peace, in their respective jurisdictions, and the distributors of stamps in their respective districts, and the superintendent of police in Cape Town, and every chief or inspector of police throughout the colony, to enter houses where liquor is sold by retail, or on or before which is affixed, as by the 22d section of this Ordinance required, any board, or other notice, importing that any of the liquors hereinmentioned are there sold by retail, and demand to see the licence; and if the same be not produced, and no good and sufficient reason be given for the non-production of of the same, it shall and may be lawful for them to seize

Licence not being produced, liquor, &c. may be seized.

all liquors found therein, as are mentioned in this Ordinance, and the vessels containing the same, and apply such liquors and vessels, as forfeited, to the use of the colonial treasury; and the occupier of such house shall be deemed an unlicensed retailer, and shall incur and be liable to the pains and penalties imposed by this Ordinance on persons convicted of selling any of the aforesaid liquors without a licence. Provided always, that the reasonable expenses of such seizure shall be paid out of the proceeds of the articles so seized.

Proceeds how to be applied.

Other penalties upon owner.

Person suspected of illicit dealing may be brought before magistrate, &c.

25. And be it enacted, that if any person shall make information on oath before a resident magistrate, or justice of the peace, and show probable cause why he suspects that any person sells any such liquors as aforesaid by retail, without licence to that effect, it shall and may be lawful for such magistrate or justice of the peace, within his jurisdiction, to summon such suspected person before him, and also to summon any other person, who such magistrate or justice of the peace shall be satisfied is capable of giving material evidence upon the subject, to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall refuse to appear, or shall refuse to be examined on oath and give evidence as aforesaid, it shall and may be lawful for the said magistrate or justice of the peace, as the case may be, to commit every such offender to prison, for a period not exceeding one month, or until the party shall no longer refuse to be examined, and give evidence as aforesaid.

Witnesses—commitment.

When licensed dealers may not sell.

26. And be it enacted, that no retail dealer shall sell, or keep any tap, canteen, or public house open for the sale of, such liquors as aforesaid, or any of them, or shall suffer any of them to be drunk or consumed therein, during any part of Sunday, or between the hours of nine o'clock at night and six o'clock in the morning, of any other day; and any person contravening this section shall, upon conviction, forfeit any sum not exceeding ten pounds, and upon non-payment thereof shall be imprisoned for any period not exceeding one month.

Penalty.

Who may enter inns, in case of riot.

27. And for the better preservation of the public peace and order, be it enacted and declared, that it shall and may be lawful for the superintendent of police, and any resident magistrate or justice of the peace within his jurisdiction, to enter any inn within which any riot, disturbance, or breach of the peace shall take or have taken place, at any hour, and to disperse or otherwise to detain and commit to safe custody, any person actually engaged therein; and for the superintendent of police, or any magistrate, justice

of the peace, inspector of police, police officer, peace officer, gaoler, or constable, to enter any house for which a retail licence is granted, where such riot, disturbance, or breach of the peace shall take or have taken place, or any house which is known to be frequented by common sailors, soldiers, labourers, or other persons of like description, or by men or women of notoriously bad fame and character, for the purpose of removing and to remove all persons rioting, making disturbance, or drinking therein; and all persons being or remaining therein (not being *bona fide* lodgers in such house) between or within the hours herein before declared to be unlawful; and if the holder of the licence for, or the keeper of, any such house, or the person in charge thereof at the time, shall not, on demand of entrance admit the superintendent of police, or such magistrate, or other person as aforesaid, or shall obstruct them, or any of them, in removing persons rioting, making disturbance, drinking, or unlawfully remaining therein between the hours aforesaid, the holder of such licence shall upon conviction forfeit any sum not exceeding ten pounds, and upon non-payment thereof shall be imprisoned for any period not exceeding one month.

Who may enter other places.

Who may be removed therefrom.

Penalty for obstructing Officer.

28. And for the better prevention and punishment of drunkenness, be it enacted, that whenever the superintendent of police, or any magistrate, or other person as aforesaid, shall find any person, at any time, drunk and lying down from the effect of intoxication in any street, road, or lane, or in any other public place within any town or village; any such person, if so apprehended during the night time, shall and may be lodged in any gaol, watch-house, or house of correction, and shall be brought up in every case as soon as convenient, and during the ensuing day at the latest, before the resident magistrate, or justice of the peace, having jurisdiction in such place; and every person so apprehended shall, on due conviction thereof, incur and be liable to a fine not exceeding £1; and in default of payment, it shall and may be lawful for the magistrate or justice of the peace, so convicting, to commit such offender to prison, with or without hard labor, and with or without spare diet, for a period not exceeding fourteen days; and in cases of repeated offence, for a period not exceeding one month, unless the fine in any case be sooner paid.

When drunken persons may be apprehended.

Penalty.

29. And be it enacted, that no person shall be entitled to or shall maintain any cause, action, or suit for, or recover at law, any sum of money, or demand for or on account of any spirituous liquors sold in any quantity less than one quart, at any one time: nor for or on account of any par-

Action barred where liquor is sold by less than the quart.

ticular item or article in any account or demand for spirituous liquors so sold, where the quantity shall be less than one quart; and in case any person shall take or receive any pawn or pledge from any person by way of security for the payment of any sum or sums of money owing by such persons for spirituous liquors so sold, or shall take or receive in payment thereof any article whatsoever in lieu of money, every such person so offending, and being convicted thereof, shall incur and be liable to the payment of a fine not exceeding *ten pounds* sterling, nor less than *two pounds* sterling, for every pawn or pledge so taken in or received by him or them; and the person or persons, to whom any such pawn or pledge shall belong, shall have the same remedy for recovering such pawn or pledge, or the value thereof, as if it had not been given as a pledge.

Taking pawns for such quantities—Penalty.

Pawn may be recovered.

Actions barred—sale to unlicensed retailer.

30. And be it enacted, that no person shall have any remedy for or recover any sum of money on account of any of the liquors in this ordinance mentioned, which shall be sold, contrary to law, to an unlicensed retailer; nor shall any such unlicensed retailer have any remedy for or recover from any person any sum of money on account of any of the aforesaid liquors sold by him; and all contracts, bills, promissory notes, bonds, and other writings, given as a security for the payment of debts contracted for any of the liquors herein mentioned, so sold to or by an unlicensed dealer, save and except negotiable instruments in the hands of holders for valuable consideration, and without notice of the illegality, shall be and are hereby declared to be null and void.

Sale by unlicensed retailer.

Obligations in such cases void.

Wine farmers—how and what quantity they may sell.

31. And be it enacted, that it shall and may be lawful for the owner or occupier of any land or farm to sell wine in any quantity not less than nineteen gallons, and brandy in any quantity not less than nine and a half gallons,—such wine or brandy being the produce of such land or farm, or made from grapes otherwise procured or purchased by him, and made, sold, and delivered on his premises; and to sell wine and brandy in quantities not less than nineteen gallons, being the produce as aforesaid, to any person in any public market, or to any licensed dealer in wines and spirituous liquors, without taking out any licence whatever; and any owner or occupier of land as aforesaid, who shall sell any such liquors in contravention of this Ordinance, shall incur and be liable to the pains and penalties imposed on persons convicted of selling such liquors without a licence.

Brewer's licence.

32. And be it enacted, that it shall and may be lawful for any person to brew malt liquors for sale, and to sell the same in quantities not less than nine and one half

gallons, on taking out a licence for that purpose on paper stamped of the value of thirty pounds.

Distiller's licence—if grapes, &c. be used.

33. And be it enacted, that it shall not be lawful for any person to distil spirituous liquors from wines or fruits not being the produce or made from the produce of any land or farm belonging to or occupied by him, or from wines made from grapes purchased or procured by him as aforesaid, without his having previously taken out a licence for that purpose on paper stamped of the value of thirty pounds, which shall authorize him to sell spirits distilled by him in cask only, and in quantities not less than nine and one half gallons.

Distiller's licence—if grain be used.

34. And be it enacted, that it shall and may be lawful for any person to distil spirituous liquors from grain, and to sell the same in quantities not less than nine and one half gallons, on taking out a licence for that purpose, on paper stamped of the value of thirty pounds.

Brewing or distilling without licence;

35. And be it enacted, that any person who shall brew malt liquors for sale, or who shall distil spirituous liquors in contravention of this Ordinance, without having taken out the respective licences for that purpose, shall incur and be liable to a penalty not exceeding £50 for each offence, and shall further, in case of selling malt liquors or spirituous liquors so brewed or distilled by him, incur and be liable to the pains and penalties imposed on persons convicted of selling such liquors without a licence.

Penalty.

If sales be also made—what?

Jurisdiction—Magistrates and Justices of the Peace.

36. And be it enacted, that all offences against this Ordinance shall, except as hereinafter provided, be cognizable before the resident magistrate, or any justice of the peace, within whose jurisdiction they shall have been committed; provided always that no justice of the peace shall have any jurisdiction over or in respect of any such offence as shall have been committed within the limits of any municipality, which shall be the seat of any resident magistrate,—or which shall have been committed within four miles of the office of any resident magistrate, not being situate within the limits of a municipality,—but all such lastmentioned offences shall be exclusively cognizable by such resident magistrates respectively.

Exceptions as regards the latter.

Proof of licence, onus upon dealer.

37. And be it enacted that, in all proceedings against any person selling, or dealing in, or disposing of, any liquors without licence, contrary to the provisions of this Ordinance, such person shall be deemed to be unlicensed, unless he shall, at the hearing of the case, produce his licence, or give other satisfactory proof of his being licensed.

Unlicensed dealing—proof of payment not necessary.

38. And be it enacted, that it shall and may be lawful for every such resident magistrate or justice of the peace,

as aforesaid, in any proceedings against any person for retailing without licence, as hereinafter mentioned, to determine upon the fact of such retailing according to the circumstances of the case, and the reasonable inferences deducible therefrom; and such resident magistrate or justice of the peace may find such fact to be proved without direct evidence of money or value having been given for the liquor alleged to have been sold or retailed.

Summons, Judgment, &c. Forms.

39. And be it enacted, that in any proceeding relative to the prosecution of any offence against this Ordinance before any justice of the peace, the form of summonses to be served upon the defendant, to appear to answer the charge, the form of the process to obtain the attendance of witnesses, the form of recording the judgment or sentence of such justice of the peace, shall, as much as may be, be in the forms respectively provided, in regard to the said several matters, for the courts of resident magistrates; and the form of warrant for committing any offender to prison shall, in substance and effect, be agreeable to the form, in that behalf, in the Schedule to this Ordinance set forth. Provided always, that in place and stead of the

Messenger.

messenger of the said last-mentioned court, shall be inserted the name of any person whom such justice of the peace shall nominate and appoint (which person is hereby authorised to act, in regard to any such summons or process as aforesaid, as if the same were the summons or process of a resident magistrate's court, of which such person is messenger), and provided that no heading, other than the direction of the instrument to such persons as as aforesaid, shall be necessary; and that no clerk or other person other than the justice of the peace issuing any such instrument, need sign the same.

Justices of the Peace to take down evidence, and note objections.

40. And be it enacted, that upon the day of hearing, every justice of the peace shall inquire into the charge by hearing all such competent witnesses, upon oath, as may be produced in support or in disproof of the same, and shall faithfully take down the evidence and proceedings in writing, and note any objections which may be made to any evidence received, or to the rejection of any evidence refused to be admitted Such justice of the peace shall

Record book—how to be kept.

make a record, in a book kept for that purpose, of every such case, showing in separate columns the name of the prosecutor; the name of the person complained of; the nature of his alleged offence; the date when the complaint was made; the day of hearing; the judgment given; the sentence pronounced on conviction; and any remarks which such justice shall deem it proper to preserve.

Conviction.

41. And be it enacted, that in every case in which any

resident magistrate or justice of the peace shall see cause to convict any person of any of the following offences, the person offending shall incur and be liable to the pains and penalties herein-under respectively set forth,—that is to say :—

Dealing without a licence. First offence —Penalty.

For selling, dealing in, or disposing of wines, spirituous liquors, liqueurs, malt liquors, ginger beer or spruce beer, without a licence, a penalty of £10, and in default of payment being forthwith made or security given for the same, to imprisonment, with or without hard labor, for any period not exceeding one month, unless the fine imposed shall be sooner paid or levied, in which case the offender shall be liberated.

Second offence—Penalty.

For any such second offence as last aforesaid, a penalty of £20, and in default of payment or security as aforesaid being made or given upon conviction, to imprisonment, with or without hard labor, for any period not exceeding three months, or to imprisonment with or without hard labour for any period until the fine imposed shall be paid or levied, such period however not to exceed three months, nor to be less than any shorter period (if any) which the magistrate or justice convicting may, in his discretion, see fit to award.

Third offence—Penalty.

For a third or any subsequent conviction of the offence last aforesaid, a penalty of £30, with or without superadded imprisonment, as hereunder mentioned : that is to say, in case the fine imposed, with costs, shall be paid or secured forthwith, to imprisonment, with or without hard labor, for any period not exceeding six months, and in case the said fine shall not be paid or secured forthwith, to imprisonment with or without hard labor, for any period not exceeding nine months, either absolutely, or until the said fine shall have been sooner paid or levied, as the magistrate or justice convicting shall award ; or such magistrate or such justice may award such imprisonment as aforesaid for any period not exceeding nine months, with a condition that it shall cease and determine after a certain minimum extent of such imprisonment has been suffered, in case the fine imposed shall then be paid or levied.

Contravening condition of Recognizance.

For the offence of contravening any of the provisions or covenants contained in the condition of any subsisting recognizance (not being a provision in regard to which any other penalty or punishment shall be by this ordinance provided) and which provisions were by any licensed person stipulated and agreed to be fulfilled and kept, a

Penalty.

penalty of £10 ; and in case the same shall not be paid or secured forthwith, to imprisonment with or without

hard labor for any period not exceeding one month, or until the fine be sooner paid; and a third conviction within the space of three years shall, *ipso facto*, forfeit the subsisting licence of the offender, if such licence there be; and such offender shall be thereupon disqualified for holding any licence to sell liquors in future.

Mitigation of Penalties.

42. And be it enacted, that it shall be lawful for any such resident magistrate or justice of the peace, as aforesaid, to mitigate any of the penalties or sums of money last aforesaid,—so as such mitigation shall not, in any case, reduce such penalty to less than one-third thereof, and that the causes of such mitigation shall be recorded, under the head of remarks, in the record book of such magistrate or justice.

Distraint and sale of goods.

43. And be it enacted, that when and as often as any offender shall be convicted of any offence against any of the provisions of this Ordinance, it shall and may be lawful for the magistrate, or justice of the peace, convicting such

Form of warrant.

offender, to issue his warrant for levying the amount of any fine or penalty imposed upon such offender, by distress and sale of the goods of such offender, whether such offender shall be in custody by reason of his conviction of such offence or not,—and for levying also the costs

Mode of sale.

of such distress and sale. And every such warrant shall, in substance, be agreeable to the form in the schedule to this Ordinance in that behalf set forth, and the overplus, if any, levied under any such warrant shall be rendered to the said offender, and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the courts of resident magistrates for the sale of goods and chattels taken under the process of

Who may sell.

execution by such courts. Provided always, that as often as any such warrant shall be issued by any justice of the peace, the person to whom such warrant shall be directed shall, for the purpose of such seizure and sale, be deemed to be invested with the same rights, and obliged to the performance of the same duties, and be remunerated at the same rate, as a messenger of a magistrate's court would have been invested with, or obliged to, or remunerated at, in case the warrant in question had been issued by such court.

Persons convicted may appeal, &c.

44. And be it enacted, that any person who shall be convicted by the judgment of any resident magistrate or justice of the peace, of any offence against any of the provisions of this Ordinance, may, should he so think fit, bring such conviction in appeal or review: Provided he shall, within three days next after the day of such convic-

tion, give sufficient security, to the satisfaction of the convicting magistrate or justice, in double the amount of the pecuniary penalty imposed, that he will take proceedings for prosecuting such appeal or review, if from the sentence of any resident magistrate or justice of the peace in Cape Town or the district thereof or the Cape Division, within fourteen days, or if from the sentence of any other resident magistrate or justice of the peace, to the next ensuing circuit court to be holden for the district or place in which the alleged offence was committed; and also that he will stand to, and perform, the judgment of the court before which the appeal or review shall be brought, in case the conviction should be there affirmed, together with the costs of such appeal or review. And in case the person convicted shall have been already committed to prison, he shall, upon such security as aforesaid, be liberated from custody, pending the hearing and determination of such appeal.

May be liberated on giving security to prosecute appeal.

45. And be it enacted, that the whole amount of every fine, penalty, and forfeiture, paid or levied upon conviction of any offence against the provisions of this Ordinance, shall, upon recovery thereof, be paid to the person upon whose information the conviction shall have been had, unless such person shall decline to receive the same, and shall direct some charitable or other appropriation thereof, in which case it shall be applied accordingly. Provided always that it shall not be obligatory upon any convicting magistrate or justice of the peace to issue his warrant for distress and sale of the goods of any offender, in manner and form as is in the 43d section of this Ordinance mentioned, unless the person prosecuting such offender shall, in the first instance, pay in advance, or otherwise secure, the reasonable costs and charges of executing such warrant.

Fine to be paid to informer.

Such person may be required to give security for costs.

46. And be it enacted, that in regard to all offences against any of the provisions of this Ordinance committed within the respective municipalities of Cape Town and Greenpoint, the judge and superintendent of police shall have jurisdiction, and shall inquire of and determine the same, according to the forms and practice of his court.

Jurisdiction—Judge of Police.

47. And be it enacted, that this Ordinance shall commence and take effect from and after the first day of January 1847. Provided always that application may be made for any retail licence, and such licence may be issued, at any time after the promulgation of this Ordinance; but no such licence shall be framed so as to take effect before the said first day of January.

Ordinance when to take effect.

SCHEDULE.

Form of Wholesale Licence.

I, , distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , to sell, by *wholesale*, wines, spirituous liquors, and malt liquors, at and not elsewhere, for from the and no longer. (Signed) ———

———

Form of Retail Licence.

I, , distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , (and who has produced to me the certificate required by law) to sell, *by retail*, wines, spirituous liquors, malt liquors, ginger beer and spruce beer, at , and not elsewhere, for , from the day of , 18 , and no longer.

(Signed) ———

The above form will apply to the case of a tap, canteen, or public house. When the certificate shall describe the licence applied for as intended to authorise the sale of liquors, not to be drunk or consumed on the premises, the words "This licence not to authorise the sale of any of the liquors aforesaid to be drunk or consumed on the premises," shall be added.

When the certificate shall describe the licence as intended to authorise the keeping of an inn, hotel, or boarding house, the words, "This licence to authorise the keeping of an inn, hotel, or boarding house, but not a tap, canteen, or public house," shall be added.

———

Form of Licence to Brew and Sell Malt Liquors by Wholesale.

I, , distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , to brew malt liquors at only, and to sell the same, *by wholesale*, and in quantities not less than 9½ gallons, for *one whole year*, from the 1st day of January 18 , and no longer.

(Signed) ———

———

Form of Licence to Distil Spirituous Liquors, from Wine or Fruits, or from Grain.

I, distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , to distil spirituous liquors from (wine or fruits, or from grain,) at only and to sell the same, *by wholesale*, in cask only, and in quanti-

ties not less than 9½ gallons, for *one whole year*, from the 1st day of January 18 , and no longer.

(Signed) ———

Form of Certificate to be granted by the Resident Magistrate.

I, A. B., resident magistrate for , do hereby certify that C. D. is entitled to receive a licence for selling wines, spirituous liquors, liqueurs, malt liquors, ginger beer, and spruce beer, by retail, at , in street, Cape Town, (or at in the district of , as the case may be.) And I further certify that the said C. D. has applied for such licence in order to keep a tap, canteen, or public house, (or "in order to sell the liquors aforesaid, not to be drunk or consumed on the premises," or "in order to keep an inn, hotel, or boarding house," as the case may be.)

Dated this day of

(Signed) A. B., Resident Magistrate for

Form of Recognizance.

Before me, , distributor of stamps for , on the day of . 18 , A. B. residing at . acknowledges himself to be indebted to our Sovereign Lady the Queen, in the sum of £50, and C. D. and E. F. severally acknowledge themselves to be indebted to our Sovereign Lady the Queen, in the sum of £25, to be levied upon their goods and lands, upon condition that the said A. B. shall not fraudulently dilute or adulterate any liquor sold by him; and shall not use in the selling thereof any measures that are not of full size; and shall not get drunk, nor knowingly permit drunkenness, nor tippling on his premises, and shall not permit gambling; nor shall knowingly permit men or women of notoriously bad fame to assemble on his premises; nor shall keep open his premises, nor permit any drinking therein, (except for the accommodation of inmates,) between the hours of nine at night and six in the morning, on any day; nor shall sell any liquors on any part of Sunday; but shall keep good rule and order therein, by night and by day; then this recognisance to be void, or else to remain in full force.

Form of Warrant for Distress and Sale.

To , messenger of the court of the resident magistrate of , (or in case the warrant be issued by a justice of the peace, "To ," the person to whom the warrant is directed.)

Whereas , (name of the offender) of , was on this day (or on the day of 184 ,) convicted before me of contravening the Ordinance No. 29, 18 , and was duly adjudged to forfeit, as a penalty, the sum of £ ; this is

therefore to authorise and require you that of the goods and chattels of the said , you cause to be levied and raised the said sum of £ , with the costs of such conviction, amounting to the further sum of £ , together with your charges about the same, and return to the clerk of this court, (or when the warrant is issued by a justice of the peace, say "return to me,") what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at , this day of 18
(Signed) ———, resident magistrate, or
———, justice of the peace, (as the case may be.)

E. F., clerk of the court (this is to be omitted when the warrant is issued by a justice of the peace).

Form of Justice's Warrant for committing an Offender to prison.

To the gaoler or keeper of Her Majesty's gaol at .

Whereas (*name the offender*) has been this day adjudged by me to forfeit and pay the sum of £ , for contravening the Ordinance No. 29 of 1846, but has not paid or secured the payment of the said sum, this is, therefore, to require you to receive the said into your custody, and him safely to keep to hard labour for the space of (*state the period of imprisonment*) now next ensuing, unless the said sum of £ shall be sooner paid or levied.

Given under my hand this day of 18 .
(Signed) , Justice of the Peace.

*** Should the imprisonment be meant to be without hard labor, the words "*to hard labor*" in the above form are to be omitted. When the imprisonment is meant to be wholly independent of the payment of the fine, or for some period fixed as a *minimum* of imprisonment, upon the expiration of which the prisoner, should the fine be paid or levied, shall be discharged, the necessary change in the form should be made.

No. 30,—1846.] ORDINANCE [Oct. 30, 1846.

For applying a sum not exceeding £161,854: 15: 10, *for the Service of the year* 1850.

Whereas the Expenditure required for the service of the Government of this Colony for the year 1847 has been estimated at the sum of One Hundred and Sixty-one Thousand, Eight Hundred and Fifty-four Pounds, Fifteen Shillings, and Ten Pence:—

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that a sum not exceeding One Hundred and Sixty-one Thousand, Eight Hundred and Fifty-four Pounds, Fifteen Shillings, and Ten Pence, be charged upon

the Revenue of the said Colony, for the service of the year 1847, and applied in the manner following, that is to say :—

For the Expenditure of the Civil Establishment,—a sum not exceeding Fifty-one Thousand, Eight Hundred, and Ninety-five Pounds, and Nine Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 1.

For the Expenditure of the Ecclesiastical Establishment,—a sum not exceeding Ten Thousand, Six Hundred and Eight Pounds, Fourteen Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 2.

For the Expenditure of the Educational Establishment, —a sum not exceeding Seven Thousand and Seven Hundred Pounds, in the manner set forth in the Schedule hereunto annexed, marked No. 3.

For the Expenditure of the Medical Establishment,—a sum not exceeding Five Thousand, Nine Hundred, and Thirteen Pounds, Ten Shillings, and Ten Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 4.

For the Expenditure of the Judicial and Law Establishment,—a sum not exceeding Twenty six Thousand, Eight Hundred, and Thirty Pounds, and Eleven Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 5.

For the Expenditure on Account of Police, Prisoners, and Gaols,—a sum not exceeding Fifteen Thousand, One Hundred, and Thirty Pounds, Four Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 6.

For the Expenditure of the Road Department,—a sum not exceeding Twenty-three Thousand Pounds, in the manner set forth in the Schedule hereunto annexed, marked No. 7.

For the Expenditure on Account of Aboriginal Native Tribes,—a sum not exceeding Two Thousand Three Hundred and Eleven Pounds, and Ten Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 8.

For the Expenditure on Account of Pensions and Retired Allowances,—a sum not exceeding Ten Thousand, Five Hundred, and Fifty-three Pounds, and Eighteen Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 9.

For the Expenditure on Account of Miscellaneous Services,—a sum not exceeding Seven Thousand, Nine Hundred and Ten Pounds, and Eighteen Shillings, in the

manner set forth in the Schedule hereunto annexed, marked No. 10.

[Here follow the Schedules.]

No. 31,—1846.] ORDINANCE [Oct. 30, 1846.

For applying a Sum not exceeding £7,421 16 10, for the Service of the Year 1846, in addition to the Sum already in that respect provided.

Whereas by Ordinance No. 13, bearing date the 7th day of October 1846, it is enacted, that a sum not exceeding One Hundred and Sixty-one Thousand, Five Hundred and Twenty-seven Pounds, Thirteen Shillings, and Five pence, required for the Service of the Government of this Colony for the Year 1846, be applied in the manner and for the purposes in the said Ordinance detailed and set forth: And whereas no provision has, in the said Ordinance, been made for the under-mentioned Services, that is to say:—

For the maintenance of Convicts from the 1st January 1844 to the 30th of June 1846, to cover the sums expended above the amounts voted, - -	£4000	0	0
Salaries to the British Resident and his Clerk in Griqualand, and allowance for the keep of two Horses, reckoned from the 23rd October 1845 to the 31st December 1846, - - -	886	10	8
Salaries to 4 Resident Magistrates at Wynberg, Malmesbury, Paarl, and Caledon, formerly defrayed from the Military Chest, reckoned from the 27th April to the 31st December 1846, at the rate of £250 per annum each, -	677	15	4
Estimated Expenditure for building a Boat-house for the Life Boats, adjoining the Port Office, Cape Town,	1182	0	1
Expenditure for the purchase of a Launch, Boats, and Carriages, for the Life Boat Establishment, - - -	675	10	9

amounting in the whole to Seven Thousand, Four Hundred and Twenty-one Pounds, Sixteen Shillings, and Ten Pence:—

Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said sum of £7,421 16 10, to

be so applied as aforesaid, shall be, and the same is hereby, charged upon the Revenue of the said Colony, for the Service of the Year 1846, as fully and to all intents and purposes as if the same had been included in, and sanctioned by, the said Ordinance No. 13, of 1845.

No. 32,—1846.] ORDINANCE [Oct. 30, 1846.

For amending the Law regarding certain Rules of Court.

Preamble. WHEREAS by the 46th clause or section of the letters patent of His late Majesty King WILLIAM the Fourth, commonly called the Royal Charter of Justice, bearing date the 4th day of May, in the second year of his reign, it was ordained and directed that it should and might be lawful for the supreme court of this colony, acting in manner and form as is in the said section prescribed, to frame, constitute, and establish rules, orders, and regulations, touching and concerning the several matters and things in the said section set forth, relating to the proper conduct and despatch of business in the supreme and circuit courts respectively: And whereas by the 29th section of the Ordinance No. 14, 1845, entituled "Ordinance for erecting a District Court in and for the District of Natal," it was enacted and declared that it should and might be lawful for the district court by the said Ordinance erected, acting in manner and form as is in the said section prescribed, to frame, constitute, and establish rules, orders, and regulations of the same nature, or for the same purposes, in regard to the said district court, as the certain other rules, orders, and regulations, by the section aforesaid of the charter of justice, are empowered to be made in regard to the said supreme and circuit courts respectively: And whereas rules, orders, and regulations of the said supreme and circuit courts respectively, have, from time to time, been duly framed, constituted, and established, and afterwards duly allowed, and are now in full force and operation within the said courts respectively: And whereas the district court of Natal did, some time since, frame, constitute, and establish, under and by virtue, and according to, the provisions of the herein before in part recited section of the Ordinance No. 14, 1845, aforesaid, certain rules, orders, and regulations, which were afterwards transmitted, as by the said section required, to Her Majesty the Queen, for her approbation or disallowance: And whereas Her said Majesty has been graciously pleased to

refrain from either approving or disallowing the said last mentioned rules, orders, and regulations, and has instructed the Governor of this colony to propose to the Legislative Council thereof, to amend the law as contained in the said 29th section of the said Ordinance No. 14, 1845, in such a manner as to render the confirmation by means of an Ordinance of the said Council of every such rule, order, or regulation as aforesaid, requisite and necessary before the same shall take effect, or have the force of law: And whereas it is expedient to confirm by ordinance the rules, orders, and regulations aforesaid, of and for the district court of Natal, and to amend, in accordance with the spirit and intent of the instruction aforesaid, the law relating to the mode in which the rules, orders, and regulations of the supreme and circuit courts aforesaid, and of the said district court, respectively, shall hereafter be framed, constituted, and established: Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the 46th section of the letters patent aforesaid, and the 29th section of the Ordinance No. 14, 1845, aforesaid, and any other law or usage repugnant to or inconsistent with any of the provisions of this Ordinance, shall be repealed, and the same are hereby repealed accordingly. Provided always that such repeal shall not extend, or be taken or construed to extend, so as to impair or affect the validity of any rules, orders, or regulations, of or for the said supreme or circuit courts respectively, in force or operation at the time of the commencement and taking effect of this Ordinance, which rules, orders, or regulations shall be deemed and judged of precisely as if this Ordinance never had been passed.

The 46th section of the Charter of Justice, and the 26th Section of Ordinance No. 14, 1845, repealed

2. And be it enacted, that it shall and may be lawful for the judges of the supreme court, from time to time, to frame and transmit to the governor of this colony, or officer for the time being administering the government thereof, in order to their being (if approved of) proposed for enactment, all such rules, orders, and regulations as the said judges shall deem proper to be enacted, touching and concerning the time and place of holding the said supreme court, and touching the forms and manner of proceeding to be observed in the said supreme and circuit courts respectively, and the practice and pleadings upon all actions, suits, and other matters, both civil and criminal; indictments and informations to be therein brought; the appointing of commissioners to take bail and examine witnesses; the examination of witnesses *de bene esse*, and allowing the same as evidence; the proceedings of the

Mode in which Rules of the Supreme Court may be proposed and enacted.

sheriff and other ministerial officers of the said supreme and circuit courts respectively; the process of the said courts, and the mode of executing the same; the summoning, impanelling, and challenging of jurors; the admission of barristers, advocates, attorneys, solicitors, and proctors: the fees, poundage or perquisites, to be lawfully demanded by and payable to any officers, attornies, solicitors, and proctors in the said courts respectively; and touching and concerning all such other matters and things as to the said judges shall appear necessary for the proper conduct and despatch of business in the said supreme and circuit courts respectively. And when and as often as the said judges shall deem it expedient that any existing rule, order, or regulation should be revoked, altered, amended, or renewed, it shall and may be lawful for them to suggest to the said Governor, or officer administering the government, such revocation, amendment, or renewal.

Mode in which Rules of the District Court of Natal may be proposed and enacted.

3. And be it enacted, that it shall and may be lawful for the Recorder of the District of Natal to frame and transmit to the lieutenant-governor of the said district, or officer for the time being administering the government thereof, in order to their being by the lieutenant-governor, or officer as aforesaid, forwarded to the Governor of this colony, for the purpose of being, if approved of, confirmed by an Ordinance of this council, rules, orders, and regulations for the district court of Natal, touching and concerning all or any of the objects, matters, and things in the last preceding section mentioned and set forth, with reference to the supreme and circuit courts aforesaid respectively. And provided also that it shall be competent to and for the said Recorder to suggest to the said lieutenant-governor, or officer administering the government as aforesaid, the revocation, alteration, or amendment of any of the rules, orders, or regulations in force, for the time being, or the renewal of any of the same before then established, but needing to be renewed.

No Rule, not yet allowed, to be of force unless enacted by Ordinance.

4. And be it enacted, that no such rule, order, or regulation, as is in the second or third section of this Ordinance mentioned, which rule, order, or regulation shall not, at or before the time of the commencement and taking effect of this Ordinance, have been sanctioned or allowed by Her Majesty the Queen, or by His late Majesty King William the Fourth; and no revocation, alteration, amendment, or renewal of any now existing rule, order, or regulation, or of any rule, order, or regulation in the schedule to this Ordinance contained, shall have or possess any force or authority, or take effect as

law, unless and until the same shall first have been confirmed, established, and enacted by some Ordinance duly made and passed by the Governor of this colony, with the advice and consent of the legislative council thereof, or by some act or instrument of her said Majesty, her Heirs or Successors, done or made with the advice and consent of Parliament, or by Her or them in Her or their Privy Council, or in some other manner or form having the force of law. Provided always that nothing in either of the said second and third sections contained shall extend or be construed so as to extend to prevent any member of the legislative council aforesaid, from initating in the said council any such rules, orders, or regulations as aforesaid, as may appear to him to be required; or to prevent the said council from altering or amending any rule, order, or regulation which may be proposed for confirmation; or from revoking any rule, order, or regulation, or from exercising any of the powers and authorities by the Royal Letters Patent of Her said Majesty, bearing date the 28th of November, in the seventeenth year of Her Reign, conferred upon the said council.

Rules, &c., contained in the Schedule, to be the Rules, &c., for the time being, of the District Court of Natal.

5. And be it enacted, that the several rules, orders, and regulations in the schedule to this Ordinance contained shall be, and the same are hereby confirmed, established, and enacted, as the rules, orders, and regulations, for the time being, of the District Court of Natal.

Ordinance when to take effect.

6. And be enacted, that this Ordinance shall commence and take effect from and after the day on which the notification of her Majesty the Queen's approval and confirmation thereof shall be published in the usual manner, in the *Cape of Good Hope Government Gazette.*

SCHEDULE.

Rules as to the admission of Attorneys before the District Court of "Natal."

1. It is ordered by the court, that every person shall be eligible to be approved, admitted and enrolled as an Advocate or Attorney before this Court, who in terms of the 15th section of the Ordinance, No. 14, 1845, entitled an "Ordinance for erecting a District Court in and for the District of Natal," shall produce due proof of his having been admitted, or shall by law be admissible, to practise as such advocate or attorney in the Supreme Court or Circuit Courts of the Colony of the Cape of Good Hope.

2. So long as there shall not be practising before the court, seven advocates or attorneys, or seven advocates and attorneys, the court will admit, approve, and enrol as attorneys before the court

such persons of good fame and credit as shall, after due examination by the court, be found to be qualified to act as such attorneys.

3. Every attorney so admitted, approved, and enrolled to practise as an attorney before the court shall pay a fee to the Register of the court, of £2 10 for such admission, which said sum shall be paid over by the Registrar to the Treasurer General of the District.

4. So long as there shall not be practising before the court seven advocates duly admitted and enrolled to practise as such before the Court, it shall be competent for the attorneys admitted and enrolled before the court, to act and conduct the proceedings and pleadings before the court in the capacity both as attorneys and advocates; but all charges to be made by the said attorneys, acting as such advocates and attornies, shall be made in conformity with a tariff, regulating such charges, to be hereafter promulgated by the court, and further subject to be taxed and allowed by the Registrar of the court.

5. The name of every applicant to be admitted and enrolled as an attorney, under the 2nd rule, shall be affixed at the door of the court-hall for the space of 8 days before his admission, and if otherwise qualified, he shall be admitted to practise, unless, during the said space of 8 days, any just cause be brought to the notice of the court, why such an applicant should not be permitted to practise before the court.

Rules of Court in Civil Cases.

1. It is ordered by the court, that there shall be six terms in each each year for the despatch of the civil business of the court, and that the said terms shall be the months of January, March, May, July, September, and November, and shall commence on the first and terminate on the last days of the same months respectively.

2. The court will sit in vacation only for so many days after each term as may be necessary for the trial of such cases as are set down for trial before the last day of term, and which could not conveniently be tried during the term, as also for the hearing and determining all motions, arrests, injunctions, or applications of the like nature, which may not admit of delay.

3. The mode of procuring the attendance of the "Recorder" during the vacations, shall be by summons taken out from and signed by the Registrar of the court; which summons shall state the names and descriptions of the parties, and the object of the attendance.

4. All motions or applications to the court shall be supported by affidavits, setting forth the facts and circumstances upon which the same are made; which affidavits shall be sworn before the Registrar of the court, or any of the magistrates or justices of the peace, duly appointed by the government.

5. In every action which shall be commenced in this court, the attorney of the party complaining shall, before any process is sued out to compel the appearance of any person to answer any claim or demand, file his warrant or authority to sue, signed by the party complaining, with the Registrar of the court;—and no civil process whereby any person may be arrested or holden to bail, in order to compel his appearance to answer any claim or demand, and abide by the judgment of the court thereon, shall be sued out against any person, where the cause of action shall not amount to the sum, or be of the value, of £15 or upwards, exclusive of any charges which may have been incurred in the recovery thereof; and unless, together with the said warrant, there be delivered to the Registrar

a direct and positive affidavit, sworn by the plaintiff, or his agent, and attested by the magistrate or functionary before whom the same has been sworn; which affidavit shall contain a true description of the person and place of abode of the party making the same,—a statement of the true sum due to the plaintiff and the cause thereof, and that the plaintiff hath not any mortgage, pledge, or security for his demand, or none adequate thereto; and, in the last case, specifying the nature and extent of the mortgage, pledge or security, and that the sum or value of £15, or upwards, remains wholly unsecured to the plaintiff; or in case the said claim or demand shall arise from any personal injury or wrong sustained by the plaintiff, that the said plaintiff hath sustained damage to the amount of fifteen pounds sterling, and upwards; and, in all cases, that the deponent believes the defendant is about to remove from the colony, and stating the grounds of such belief: provided that if the plaintiff sues as executor or administrator of any deceased person or as a trustee of any insolvent estate, it shall be sufficient for such person to set forth in his affidavit, that the said defendant is indebted, &c. as appears by the books of such deceased or insolvent persons and as the deponent verily believes. And it is further ordered, that such warrant and affidavit shall be filed by the Registrar of the court; and office-copies of the same, or any of them, shall at any time be granted by him to the defendant; and he or his attorney shall be at liberty, without charge, at all reasonable times to search for and peruse the same respectively.

6. In all such cases the process of the court shall be by writ of attachment, directed, signed, and endorsed, in the same manner as required in the ordinary process of this court, and shall be as near as may be in the form following, viz: —

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to the Sheriff of the District Court of Natal, or his lawful Deputy greeting: —

We command you, that you take C. D. of street, in Pietermaritzburg, merchant, if he be found in this colony, and safely keep him, so that you have him before the District Court of our said colony, at Pietermaritzburg aforesaid, on the day of next, then and there to answer A. B., wherefore he hath not [paid to the said A. B. the sum of £ sterling, of lawful money, which he owes to and unjustly detains from him,—*or* hath not delivered to the said A. B. certain boat, together with its oars, furniture, &c.—*or*, other moveable thing,—which the said C. D. unlawfully detains from the said A. B.—*or* hath not satisfied the said A. B. his damages, which the said A. B. hath sustained in respect of, &c.—stating any wrong or injury committed by the defendant, as the case may be,] as it is said; and have you then there this writ, with whatsoever you have done thereupon.

Witness HENRY CLOETE, Recorder of the said District Court, at Pietermaritzburg, in the Territory of Natal, the day of in the Year of Our Reign.

G. H.

No. Street Pietermaritzburg,
Plaintiff's Attorney.

E. F.
Registrar of the Court.

7. And be it further ordered, that the Registrar of the court shall

endorse on the said writ of attachment the costs and charges for issuing the same, and the sheriff or his lawful deputy shall upon any arrest to be made by virtue thereof give to the defendant at his request and at his charge, a true copy or (whenever the defendant does not understand the English language) an authentic translation thereof; and it is further ordered that if, upon any arrest, the defendant or any one on his behalf shall give to the sheriff reasonable security by bond or obligation of the said defendant, and of another person residing and having sufficient within the colony, that the defendant shall appear according to the exigency of the said writ, and who shall stand to abide and perform the judgment of the court thereon, or render himself to the prison of the district court of this colony in execution for the same, or if the defendant shall pay to the sheriff or his deputy the sum or thing mentioned in the said writ, together with the costs and charges endorsed thereon, and the further sum of £1 for the charges of making the said arrest, then the sheriff shall permit the said defendant to go at large and free of the said arrest as to the said action. And said bond or obligation shall be as near as may be in the form following, viz:—

Know all men by these presents, that we, C. D. of and E. F. of are held and firmly bound to C. H. Esq., sheriff of the district or territory of Natal, in the sum of £ [the sum, or value of the thing, mentioned in the writ] sterling, of lawful money, to be paid to the said sheriff, or his certain attorney, executors, administrators, or assigns, for which payment to be made, we bind ourselves, and each of us for himself in the whole, our and every of our heirs, executors, and administrators, firmly by these presents.

Signed with our hands, this day of , in the year of our Lord .

The condition of this obligation is such, that if the above bounden C. D. do appear by his attorney, before the district court of the said colony of Natal, on the day of to answer A. B. wherefore [following the statement in the writ of attachment,] and also shall stand to, abide, and perform the judgment of the said court thereon, or render himself to the prison of the said court, in execution thereof; then this obligation to be void, otherwise to remain in full force.

C. D.
L. M.

Signed and delivered in the presence of

M. N.
O. P.

8. If the sheriff shall have taken from the party arrested any money or thing for the said plaintiff, or any bond or obligation, by virtue of any writ or attachment, then the said sheriff shall, after four days from the day of such return, and being thereto required by the plaintiff, or his attorney, deliver over to the said plaintiff, or his attorney, the money or thing, or assign to the said Plaintiff such bond or obligation, by an endorsement to be thereon made by the said sheriff, under his hand; which endorsement shall be, as near as may be, in the form following, viz:—

I, the within named sheriff, at the request of A. B. the plaintiff within named, hereby assign to him, the said A. B. within the bail-bond, and all the benefit and advantage arising therefrom.

In witness whereof I have hereunto set my hands this day of in the year of our Lord

C. H. Sheriff.

9. Every person arrested or summoned in any case of arrest or injunction shall be allowed to anticipate the day of appearance, and to apply to the court by motion for a dissolution of the said arrest or injunction, upon giving 24 hours' notice of such motion to the attorney of the party suing out the same.

10. All civil process may be sued out by any person having any demand, or matter of complaint, against any other person whomsoever, except only against the officer administering the government, or Her Majesty's justices of the supreme court of the colony of the Cape of Good Hope, or the Lieut. Governor, or officer administering the government, or the recorder, or the judge of the district court, in the territory of Natal, in which cases, such process shall not be sued out, without leave of the court, upon motion first had and obtained. And the said process shall be dated on the day on which it is issued, and made returnable by the sheriff of the court, through the registrar of the said court, on any day in or out of term, so as to allow time to the sheriff for service, over and above the number of days hereafter prescribed, by the 14th rule, for the due service of the said process on the defendant: except summonses for provisional sentences, which shall be made returnable on such day within term as shall be hereafter notified as the days for hearing and determining provisional cases within each term: and the said process shall be signed by the registrar of the court, and issued by him, for which the warrant to sue, produced to him by the plaintiff's attorney, shall be his authority; and the said process shall be endorsed with the name and address of the attorney suing out the same.

11. No service of any process, order, notice, or proceeding, or any act done in any civil action, except the case of arrest, shall be valid or effectual, if performed on a Sunday. But all process returnable on a Sunday, or upon a holiday, shall be returned on the following day; and any act required to be done by any party in court, at a time which would otherwise fall on a Sunday, or holiday, shall be valid and effectual if done on the following day.

12. The ordinary process of the court, to compel the appearance of any person to answer any complaint or demand, in all simple original actions,—shall be by summons, directed to the sheriff, (except when the sheriff is a party, and then to some fit and proper person named by this court,) requiring the said sheriff (or such other person) to command the defendant, that he render to the plaintiff the sum or matter in question, or perform that which the plaintiff claims or demands from him: and, in default thereof, to summon the defendant, that he appear before the court on a certain day set forth in the said summons, to show cause why he hath not done it; which summons shall be, as near as may be, in the form following, viz:

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; to the Sheriff of the District of Natal, greeting:

Command C. D. of street, Pietermaritzburg, agriculturist, that justly, and without delay, he [render to A. B. the sum of £ sterling, of lawful money, which he owes to, and unjustly detains from him, or perform that which the plaintiff claims or demands to be performed, as the case may be, stating shortly and distinctly the nature and cause of the action.] as it is said; and, unless he shall do so, then summon the said C. B., that

he appear before our district court of Natal, at Pietermaritzburg aforesaid, on the day of next at 10 o'clock in the forenoon, to show wherefore he hath not done it; and return you then there this summons, with whatever you have done thereupon.

Witness H. Cloete, our Recorder for the said district Court of Natal, at Pietermaritzburg, the day of in the year of our Reign.

G.H.

No. street, Pietermaritzburg,
Plaintiff's Attorney.

E. F.
Registrar of the Court

13. In all cases where, by law, any person may be summoned to hear claim made for obtaining a provisional sentence or condemnation for payment, under security, a copy of such instruments or documents upon which the claim for provisional sentence is grounded, shall be served on the person summoned, together with the copy of the said summons; and the said summons shall be, as near as may be, in the form following, viz:—

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith; to the Sheriff of the District Court of Natal, or his lawful Deputy, greeting:—

Command C. D. of street, Pietermaritzburg, merchant, that justly, and without delay, he render to A. B. the sum of £ sterling of lawful money which he owes to the said A. B upon and by virtue of a certain promissory note, [or other instrument—describing it,] bearing date the day of in the year of our Lord signed by the said C. D [*or*, signed by and endorsed by the said C. D. as the case may be,] together with the interest thereon, from the day of as it is said; and, unless he shall do so, then summon the said C. D. that he appear before our district court, for the territory of Natal, at Pietermaritzburg, on the day of next, at 10 o'clock in the forenoon, to show wherefore he hath not done it, and also to acknowledge or deny his handwriting [or, signature,] affixed to the said promissory note, [or other instrument, as the case may be,] or the validity of the said debt: and also summon the said C. D. then and there to plead to the provisional claim of the said A. B. for payment thereof, under security, and to join issue thereon; and serve on the said C. D. a copy of the said promissory note, [or other document,] whereon the said provisional claim is founded; and return you then there this summons, with whatsoever you have done thereupon.

Witness H. Cloete, our Recorder of the District Court in and for the Territory of Natal, at Pietermaritzburg, the day of in the year of our Reign.

G. H

No. street Pietermaritzburg,
Plaintiff's Attorney.

E. F.
Registrar of the District Court.

14. In all cases, where no process for arrest has been issued, a copy or a translation of the summons, and a copy of every document belonging thereto, shall be served either personally on the

defendant, or at his dwelling house, or place of abode, at least 48 hours before the day therein prescribed for his appearance, when such service shall take place at Pietermaritzburg, or within one day's distance thereof; and when any person so to be summoned shall reside at more than one day's distance from Pietermaritzburg, the summons shall be served on him one day earlier than the said period of 48 hours, for every day's or part of a day's distance beyond the first at which he shall so reside, reckoning every six hours' travelling on horseback at the usual rate of one day's distance.

15. Every summons to procure or compel the appearance of any party as defendant, in any civil suit or action, shall state and set forth shortly and distinctly the nature and grounds of the complaint or demand, and in all simple original claims not exceeding the amount or value of £30, such as book debts, accounts, or the like, such statement contained in the summons shall be allowed to stand for and be taken as, and in the place of, a declaration of the cause of action between the parties.

16. In all other actions not excepted in the preceding rule, when the defendant has, by his attorney, entered his appearance to answer any complaint or demand, (which the defendant's attorney shall be bound to do within four days next after the return day set forth in the summons,) the plaintiff's attorney shall file with the registrar of the court the plaintiff's declaration or claim and notice thereof shall be given forthwith to the defendant's attorney, and such declaration shall be filed, at furthest, within the term next after that in which the summons was issued; in default whereof the plaintiff shall be barred from declaring or making claim: and where the defendant does not appear to the summons the declaration shall in like manner be filed in the office of the registrar, or be otherwise made within the time aforesaid. And it is further ordered that the plaintiff's declaration shall not vary from the summons or other process, in any material point, but shall state truly and concisely the name and description of the party suing, and the right in which he sues; the name of the defendant and the capacity, (if any) in which he is sued; the nature, extent, and grounds of the cause of action, complaint, or demand,—and such conclusions as, according to the form of each particular action, the plaintiff shall by law be entitled to deduce therefrom; and if any argumentative or irrelevant matter be stated in the declaration, the court shall direct the same to be struck out, with or without payment of costs.

17. In all cases where the defendant has appeared by attorney, he shall plead, answer, except, or make claim in reconvention, within eight days next after the filing of the plaintiff's declaration, and notice served thereof in writing on the defendant's attorney; unless, upon application to the court, further time be granted to him for that purpose: provided notice has been given to him so to plead, answer or except; and provided also, that a written demand for a plea, or answer, has been served by the plaintiff's attorney on the opposite attorney, after the expiration of the said eight days, and twenty-four hours have expired after the service of such demand,—in default whereof, the defendant shall be barred from answering thereto; and the plaintiff's attorney shall be entitled to proceed as by default against the defendant:—and the said defendant's plea shall either admit, deny, confess, or avoid all the material facts alleged in the declaration or claim of the said plaintiff, and shall clearly and concisely state, and set forth, such facts

as the defendant shall deem material in answer to the plaintiff's demand; and the said plea shall not contain any allegations or counts which may be repugnant or contradictory to each other; and if any argumentative, irrelevant, or contradictory statements are stated in the said plea or answer, the same being shown to the court shall be struck out of the plea, with or without payment of costs, as the court shall direct.

18. In all simple original actions, referred to in the preceding 15th rule, where the sum demanded does not exceed the amount or value of £30, where the defendant having been served with a copy or translation of the writ or process has not appeared or entered any appearance within the time prescribed by these rules; the plaintiff's attorney, after having served the defendant with a notice in writing, to plead, answer, or except thereto, and 24 hours having elapsed after the service of such notice, shall be at liberty to proceed as by default against the defendant, and set down the cause for trial and judgment of the court, upon giving due notice thereof in writing to the said defendant; and the day to be fixed for the trial of such cause shall in no case be less than 8 days after the date of the service of the notice of the cause being set down for trial.

19. In all other actions, not referred to in the last preceding rules, where the defendant, having been served with a copy or translation of the writ or process of the court has not appeared within the time prescribed by the same, the declaration shall be filed with the registrar of the court, having endorsed thereon :— "Filed for default of appearance, A.B. plaintiff's attorney, Pietermaritzburg," and a copy of the said declaration shall be served upon the defendant, or, in case he cannot be found, at his dwelling house or place of abode, together with a notice in writing, subjoined thereto, and signed by the plaintiff's attorney, containing his address, informing the defendant that the declaration has been filed on his default by the plaintiff; and also containing a notice, that defendant must plead, answer, or except thereto within 8 days from such service; and that, in default thereof, he will be debarred from pleading, answering, or excepting thereto.

20. After the defendant has filed his plea, of which he shall be bound to give notice in writing to plaintiff's attorney, the latter shall be bound, within 8 days from the date of such notice to reply thereto, and to make answer to any claim which the defendant may have made in reconvention, unless upon application to the court further time be given to him for that purpose; and in default thereof, and after the expiration of 24 hours after demand of replication has been made, the plaintiff shall be barred from replying or answering thereto.

21. If the reply of the plaintiff contain any new matter, or if therewith he also plead or answer to the claim of defendant in reconvention, the defendant shall be allowed to rejoin to the said replication, or to the plea or answer in reconvention, but not otherwise; and such rejoinder or replication in reconvention shall be filed, and notice thereof given, within 8 days after the replication or answer of the plaintiff; and in default thereof, after the expiration of 24 hours after demand thereof, the defendant shall be barred from rejoining or replying.

22 In like manner, and within the same and subject to the same consequence as is by the foregoing rule specified with respect to the rejoinder of the defendant to replication in convention, the plaintiff shall also be permitted to rejoin in reconvention.

23. Either party may, however, upon application to the judge at chambers, obtain time to declare or make claim, plead, answer, reply or rejoin, or apply for an order to amend the said pleadings respectively, or to add copies or lodge any additional documents with the proceedings, upon sufficient cause being shown to the satisfaction of the judge, and upon such terms as he shall impose.

24. There shall be annexed to the declaration, and to the plea or other pleadings, a schedule of all documents or papers which the plaintiff and defendant respectively propose to give in evidence upon the trial of the case; and inspection copies of all such documents and papers shall be given (if in the possession or under the control of either of the parties respectively,) to the opposite party or his attorney at his request, and at his expense; and no other documents than those set forth in the said schedule shall be allowed to be produced in evidence upon the trial of each case, unless with the leave of the court.

25. Whenever it shall happen that the plaintiff by his default has been barred from declaring or making claim, the defendant shall be at liberty, upon leave of the court, on motion for that purpose obtained, to sign judgment against him for not proceeding in the said cause; and the said judgment shall be entered on record against the said plaintiff, and thereupon the said defendant shall be at liberty to proceed to tax the costs of the said cause against the plaintiff.

26. Where any proceeding in a cause has been irregular or improper, it shall be competent to the opponent of the party causing the irregularity, before taking any further step thereon, to apply to the court by motion to set aside such proceeding,—calling upon the opposite party to show cause why the same should not be set aside for irregularity; and the court upon proof of the service of such, shall make such order thereon as shall seem fit.

27. Where, after the written pleadings in any action are closed, and the facts therein being admitted, the law arising therefrom only is disputed, either party may set down the case for hearing, upon giving 7 day's notice thereof to his opponent, previous to the day for argument; and for that purpose shall give a note thereof to the registrar of the court containing the names of the parties and their attorneys, 4 days at least before the day appointed for argument.

28. Notice of trial shall be given, by the party setting down the same, to his opponent, 7 days previous to the trial:—But where it shall be made to appear to the court, upon the application of either party, that the witnesses in the said cause reside at a greater distance than one day's journey, or six hour's ride, from Pietermaritzburg, or the place where the case is to be tried by the court, —then 14 days' notice shall be given, or such longer time as the court, under the circumstances of the case and the possibility of the party getting up his witnesses within a reasonable time, shall deem reasonable to grant.

29. The party giving notice of trial may, at any time before the cause is called for trial, countermand the same, upon payment of the costs incurred, by his giving such notice and countermand.

30. Either party desiring the attendance of any person to give evidence on the trial of a cause, may of right, without any prior proceeding whatsoever, take out from the office of the registrar of this court one or more summonses for that purpose;—each of which

summonses may contain the names of four persons:—and service thereof, upon any person therein named, shall be made by delivering to him a copy of the said summons, and at the same time showing him the original, and informing him of the exigency thereof;—and any person being so summoned, a reasonable time before the trial, and his reasonable expenses having been paid, or tendered to him, and not having any lawful impediment, will, on his default, be liable to be attached, fined, and imprisoned, for his contempt of the process of the court:—without prejudice to any other claim or remedy the party aggrieved by his default may by law have against him on that account;—and the process for summoning such witnesses shall be, as near as may be, in the form following,—that is to say:

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; to G. H.—I. K.—L. M. and N. O. greeting:—

We command you, that, laying aside all and singular business and excuses, you, and every one of you, be and appear personally before our district court of Natal, at Pietermaritzburg, on the day of , at 9 o'clock in the forenoon of the same day, to testify all and singular those things which you, or either of you, know, in a certain cause now depending in our said court, at Pietermaritzburg, between A. B. Plaintiff, and C. D. Defendant; wherein the said A. B. complains, &c. [or claims, &c, stating shortly the nature of the action,] on the part of the plaintiff, [or defendant] and this you, or any of you, shall by no means omit, under the penalty, upon each of you, of one hundred pounds sterling.

Witness H. Cloete, our Recorder for the said district court of Natal, at Pietermaritzburg, the day of in the year of our Reign.

G. H.

No. street, Pietermaritzburg,
Plaintiff's Attorney,

E. F.
Registrar of the Court.

31. Whenever it shall be made to appear to the Court, on the application of either party, in any cause originally commenced in this court, that the said cause may more conveniently to the suitors therein be tried before the court in any of the divisions into which this district has been subdivided for the purpose of holding its sittings, and at the time that the court shall be holding its sitting in any such division, upon application of either party, the court will make such order thereon as the justice of the case may require.

32. Upon all trials of civil cases before the court, the counsel for the plaintiff shall briefly state the facts which he means to prove, without comment thereon, and shall then proceed to the proof thereof:—after the evidence is closed, it shall be competent to the counsel for the plaintiff to observe generally upon the case; and after him, in like manner, the counsel for the defendant; and no further reply shall be permitted, except any new law shall be adduced by the counsel for the defendant; in which case, the counsel for the plaintiff shall be permitted to reply to such new law only. And upon all arguments or motions before the court, the plaintiff's or applicant's counsel shall be first heard and shall have the right to reply.

33. In the examination of witnesses before the court, after the

witness has been examined in chief by the counsel producing the same, he shall be examined by the opposite party; and the party at whose instance the witness has been produced shall not be entitled to re-examine the witness, except upon any new matter arising from the cross-examination, without special leave of the court.

34. Whenever the testimony of any witness is in danger of being lost, before the matter to which it relates can be made the subject of judicial investigation, either party, desiring his testimony, shall apply in term time to the court, on motion,—or in vacation, upon affidavit, to the judge at chambers,—setting forth the particular circumstances under which the same is made, that the said witness may be forthwith examined conditionally, either before the court or a commissioner thereof, according as such witness resides near to, or at a distance from, Pietermaritzburg; and the said court will thereupon make such order as the justice of the case may require.

35. The party in whose favor any final judgment, decree, or sentence of this court, has been pronounced or given,—where, by the provisions of the ordinance of the governor and council of the Cape of Good Hope, No. 14, 1845, entitled an "ordinance for erecting a district court in and for the district of Natal," there can be no appeal to the supreme court of the colony of the Cape of Good Hope; or where, there being such right of appeal, no petition for leave to appeal is lodged within the space of 10 days from and after the pronouncing such final judgment, decree, or sentence; may at his own risk and without any leave for that purpose, sue out of the office of the Registrar of the Court one or more writs or processes for the execution thereof, and without any summons or re-summons thereon:—provided, that no such process shall issue against the immoveable property of any person, to raise any sum of money, debt, or damages, by the sale thereof, except where, by sentence of the court, such immoveable property may be specially liable to sale, until any process which may have been issued against his moveable property shall be first returned, and the court shall perceive thereby that the said person has not sufficient to satisfy the exigency thereof; or if no such process have been issued, until, upon motion to the court for that purpose made, it shall appear, to the satisfaction of the court, that the person against whose immoveable property such process is desired has no moveable property which can be taken in execution of the sentence of the court, or is sufficient to satisfy the same:—and no process of execution shall issue for the levying or raising of any costs, awarded by the court to any party, until the same have been taxed by the master of the court; and for that purpose due notice shall be given, by the attorney of the party obtaining any appointment from the master for such taxation, to his opponent, of such appointment, in order that he may be present thereat; and the master shall, in his taxation and allowance, pursue such instructions as shall from time to time be given to him by the court for that purpose; and either party feeling aggrieved by his decision may apply to the court on motion, specifying the items, charges, or allowances objected to, that the said master may review this taxation.

36. Where any person against whom any final judgment, decree, or sentence, or any rule or order of court, having the effect of final or definitive sentence, has been pronounced, may by law appeal therefrom to the supreme court of the colony of the Cape of Good Hope, such person shall, within 10 days next after the same shall have been pronounced, lodge in the office of the registrar of the

court a petition for leave to appeal therefrom, and shall forthwith give notice of the lodging of such petition to his opponent, and after the lodging of such petition, and *before the determination of the court thereon*, no writ or other process for the execution of any such judgment, rule, or order, shall be sued out, by any person whatever, without a rule of this court for that purpose had upon motion made in court for leave to sue out execution, notwithstanding the said appeal. But the costs of the said suit may nevertheless be taxed and ascertained in manner provided for the purpose.

37. Where any petition for leave to appeal has been made in this court within the time appointed for so doing, the party appellant shall, within one month thereafter, enter into recognizance with the party respondent, together with two other persons having sufficient within the colony, for the due prosecution of such appeal, and for the payment of all such costs as may be awarded thereon by the judgment of the supreme court to the party respondent;—in default whereof, such appeal will be disallowed.

38. Where, upon any petition for leave to appeal, this court shall direct that the judgment, decree, order, or sentence appealed from, shall be carried into execution, notwithstanding such appeal,—the person in whose favour the same shall be pronounced or given shall, before suing out execution thereon, enter into recognizance to the party appellant, of himself and two others, having sufficient within this colony, in the full sum or value of the judgment, decree, order, or sentence appealed from, for the due performance of such judgment or order as the supreme court of the colony of the Cape of Good Hope shall think fit to make thereupon; and in case this court shall direct the execution of any judgment, decree, order, or sentence to be suspended, pending the said appeal,—the party appellant shall in like manner, and before any suspension of such execution is made, enter into the like recognizance for the due performance of such judgment or order as the said supreme court shall think fit to make thereupon, together with such recognizance for the prosecution of the said appeal, and for the payment of the costs thereon, as is in that behalf provided.

39. All recognizances upon appeals shall be entered into before the court, and the names, description, and places of abode, of the persons offering themselves as bail, shall be entered into a book kept for that purpose in the registrar's office:—and notice of such bail being offered shall forthwith be given to the opposite party, specifying the time and place where they will justify their ability to enter into such recognizance;—and, if after due notice, he do not appear to oppose the said bail, or pray for and obtain further time to examine into their sufficiency, and the said bail will swear to their sufficiency, then they shall be permitted to enter into the said recognizance.

40. When by the return of the sheriff to any process of this court for the attachment of any immoveable property, it shall appear that he has attached the same, the attorney of the party at whose instance the said attachment has been made shall deliver to the master of the court an office copy of the said process and return, together with the particulars of the said property; and thereupon the master of the court shall inquire of and ascertain the extent and particulars of all bonds, mortgages, or claims affecting the same; and shall call upon all parties interested in the said property to meet at his office, to consider the expediency of selling the same, and to propose the conditions of the sale.

41. Any person interested in the said property may attend the master for the purpose aforesaid, personally or by an agent authorised by any writing under the hand of said person.

42. It shall be competent to any person interested in said property to object to the sale thereof, upon applying to the court by motion,—setting forth the grounds of his objection, and giving all other parties, interested in such sale, notice of such motion, when the court shall make such order thereupon as to the court shall appear most consistent with the interests of all parties interested in such sale.

43. The conditions of sale having been determined upon, the master of the court shall advertise the sale thereof in some public newspaper, or in such manner as he may deem most expedient for giving publicity thereto; and shall fix the date of such sale at not less than six weeks from the date of such public notice; and the said advertisement and notice shall contain a description of the situation, quantity, quality, and particulars of the property, the time and place of holding the sale, and, generally, the conditions thereof.

44. The sale of all immoveable property shall take place before the master of the court, or a commissioner of the court, in the court hall or upon the premises, as shall be determined upon by the parties interested in the said property.

45. The sale shall be by public auction, to the highest bidder, by rise and fall, in such manner as has been usual within this territory.

46. The master of the court shall, immediately after the sale of any immoveable property as aforesaid, report the same to the court with the conditions of the sale; whereupon the court shall confirm the sale, and order the property to be transferred to the purchaser, or shall make such order thereon as to the court shall seem fit.

47. Immediately after the sale, the master shall proceed to ascertain the several claims to the purchase money, and shall duly state the same in the order of their preference, in a plan of distribution thereof; which plan shall lie in his office, for the inspection of the parties interested, a sufficient time, not being less than 14 days, so as to enable all parties interested in the distribution of the assets to object to the same.

48. Any party objecting to the plan of distribution shall give the master a note in writing of his said objection, and shall also give notice to all parties interested of his intention to appeal from the said plan; and thereupon the party shall appeal by motion from the said plan of distribution to the court.

49. If no appeal be made from the plan of distribution within the time mentioned in the 48th rule, the said plan shall upon the report of the master be confirmed.

50. After the plan of distribution has been confirmed by the court, the master shall proceed forthwith to distribute the purchase money of the property accordingly, and shall pay over the surplus if any, to the debtor,—taking proper receipts for all money so paid by him.

51. The expenses of conducting any sale in the master's office shall be borne in the first instance by the party requiring the same, and shall be reimbursed to him out of the first proceeds of the said sale.

52. Either party in any suit or action, originally brought in any inferior court of this district, who shall desire to bring the proceed-

ings in such suit or action under the review of this court, may obtain the process thereof commanding the magistrate or other person, in whose custody the record and proceedings of such inferior court shall be, to return and certify to this court a copy of such record and proceedings, on such day as shall be therein specified for that purpose; and the party suing out such process of this court shall also obtain and cause to be duly executed the process of the court for summoning the opposite party in the said suit or action, to show cause, on the day therein specified for that purpose, why the proceedings of the inferior court shall not be set aside or corrected; and the said summons shall state shortly and distinctly the grounds upon which the said party seeks to have the said proceedings set aside or corrected.

53. No translation of any document shall be used in any proceedings before this court, except such as are attested to be true and correct by a sworn translator, admitted and enrolled by order of the court, after examination of such translator, as to his qualifications and fitness, before the court, or by some person expressly appointed for that purpose.

TABLES OF FEES AND CHARGES,

To be allowed by the Sheriff, in respect of executing the Process of the District Court of Natal.

	£	s.	d.
Registering summons or other process -	0	1	0
Service in any town or village, - - -	0	2	0
——— out of any town or village, and within one hour's distance, - - - -	0	4	0
——— ——— ——— ——— ——— at greater distance, per day, - - - - -	0	5	0
Horse-hire out of town, for the first hour, -	0	3	0
——— ——— at a greater distance, per day,	0	6	0
Postage (if papers to be transmitted) per charge,			
Taking inventory, not exceeding in length one hundred words, - - - - -	0	3	0
——— ——— ——— exceeding ——— ———			
per folio, - - - - - - -	0	3	0
In respect of process of execution upon the amount directed to be levied — where process shall be withdrawn before any levy made, at the rate of £1 per cent.			
after levy made, but before sale, at the rate of £2 and half per cent.			
where sale made, at the rate of the first £100, £5 per cent.			
for every following £100, £4 per cent.			
Keeping possession of property on the premises, per diem, - - - - -	0	7	6
If removed from the premises and placed in hands of the sheriff's broker who is responsible to him, the broker to be paid ordinary store-hire or warehouse-room, and necessary expense of removal, in addition.			
Executing any writ of arrest, - - -	1	0	0
Drawing and executing bail-bond, - -	1	0	0
Executing any writ of ejectment, - -	1	0	0

	£	s.	d.
Executing an attachment upon immoveable property, - - - - - - -	1	1	0
Notice to the registrar of deeds of the attachment of immoveable property, - - -	0	5	0
Drawing and copy of advertisement, - -	0	3	4
Expense of advertising (amount paid for the same)			
Stamps in addition, when required by law to to be used,			
Necessary charges (not particularly specified, and incurred in the execution of process,) subject to taxation by the Master of the court.			

TARIFF OF FEES.

To be taken in Civil Cases by the Registrar of the District Court of Natal.

	£	s.	d.
Filing any declaration, plea, answer, or any other or subsequent pleading, - - -	0	2	6
Searching for every record or document through any one year, - - - - -	0	1	0
——— ——— ——— every additional year,	0	1	0
Office copy of any document not exceeding one folio of 100 words, - - - -	0	2	0
——— ——— ——— ——— exceeding one folio, and every additional folio of 100 words, at the rate of per folio, - - -	0	0	6
Filing attorney's warrant to sue or defend -	0	2	6
——— affidavit to hold to bail, - - -	0	2	6
Upon every original writ or summons, - -	0	2	6
Entering defendant's appearance, - -	0	1	6
Upon filing with the registrar every memorial, petition, or application to the court, (except petition to appeal) - - - - - -	0	1	0
For every affidavit used in support thereof, -	0	1	0
——— rule to show cause, - - -	0	3	0
——— absolute rule or order, - -	0	3	0
Signing judgment against a plaintiff for not proceeding, - - - - - - -	0	3	0
Entering and setting down cases for trial, argument, or judgment, - - -	0	3	0
Recording judgment, interlocutory or final, -	0	3	0
Process of execution, - - - - -	0	3	0
Lodging petition to appeal, - - -	0	3	0
Taking recognizance in cases in appeal, for each person, - - - - - - -	0	3	0
Noting bail in cases in appeal, - - -	0	1	6
For every witness examined in court, and every deposition read in proof, - -	0	2	0
——— oath administered to a person for examination thereupon before an arbitrator or referee, - - - - - - -	0	2	0
——— document exhibited in proof, -	0	1	0
For every commission, as to sale of property under attachment, and sealing - - -	0	3	0

	£	s.	d.
For every Commission to examine witnesses out of the district, and sealing, - -	0	10	0
For affixing the seal of the court in any other case - - - - - - -	0	3	0
For taking security for restitution in provisional cases - - - - - - -	0	3	0
Making an award, or report of the master, a rule of court, by theparty moving, -	0	3	0
For admission as an attorney of the court, -	2	10	0
——————a translator of the court, -	1	0	0

For business transacted at Chambers.

	£	s.	d.
For every summons, - - - - - -	0	1	6
——————order thereon, - - - - -	0	3	0
——————affidavit used, - - - - -	0	1	0
——————witness examined conditionally before the recorder or commissioner, - - -	0	10	0
Taking down the examination of any witness, not exceeding 100 words, - - - -	0	3	0
——————every additional folio of 100 words, at the rate of per folio - - - -	0	1	6
For office copies of any examinations, same fee as for office copies in registrar's office.			
For every recognizance entered into before the recorder at chambers—each person, - -	0	3	0
No fees to be taken in proceedings for obtaining the sequestration of an estate, upon the surrender of the insolvent.			

Rules to be observed in Criminal Cases.

It is ordered; that, in the beginning of the month of January of every year, the sheriff shall apply to and receive from the officer appointed under the provisions of the Ordinance of the Governor and Council of the Cape of Good Hope No. 17, dated 4th December, 1845, and entitled an "Ordinance for determining the qualification of jurors in the district of Natal," a list of all persons qualified to act as such jurors within the said district of Natal from which list the sheriff is required to form a book, to be styled "the jurors' book," in which he is to enter the names, christian names, and places of abode, of every person so qualified to serve as such juror; and the sheriff is further required, as soon as the said jurors' book shall have been so made up, to deliver the same to the registrar of the court for safe custody, by whom the same will be produced on demand, to any person having any interest therein.

2. It is further ordered, that a true copy of the said jurors' list shall be fixed in some conspicuous place in the court-hall of Pietermaritzburg, with the date attached thereto, when the same shall be so affixed and authenticated by the signature of the said sheriff; and every person who may find his name attached to the said list as such juror, and who may conceive to have just grounds for being exempted or disqualified to serve as such juror, shall be at liberty, within 10 days after such list shall have been publicly affixed, to apply personally or by his agent, to the "recorder" of

the district court, to have his name erased from the said list; who shall thereupon inquire into the merits of such grounds of exemption or disqualification, and decide thereon as may appear to him just; and after the lapse of the said 10 days, the said jurors' list shall be held to be valid, and bind every person therein set forth, to serve as a juror, except upon any grounds of exemption or disqualification which may arise during the current year, and which every person shall be at liberty to bring forward in manner aforesaid, before the "recorder" of the district court, as soon after the cause of exemption or disqualification shall have arisen as he may think proper.

3. There shall be twelve sessions in every year, for despatch of the criminal business of the court.—The said sessions to commence on the 20th day of every month throughout the year; to be continued by adjournment as the case may require, until the whole criminal business shall be disposed of:—Provided that whenever either of the said days shall happen upon Sunday or a holiday, the session shall commence on the Monday, or the day following the said holiday.

4. Eight days, at the least, before the holding of any session of the district court in criminal cases, the sheriff shall summon 27 men, named in the jurors' book, residing within one day's distance, or six hours' riding from the place where the session of the court will be held, to serve as jurors, which said men he shall take indifferently, one from the top and another from the bottom of the list contained in the jurors' book, alternately, until the whole of the said list shall have been gone through, and the said sheriff shall, upon receiving the new list in each year, commence taking the names of those whom he is to summon at the place in the new list which corresponds to the place at which he left off in the old list,—and the said sheriff shall return a list, containing the names, the places of abode, and the description of the jurors so summoned, on the first sitting of the court, to the registrar of the said court; and the jurors so summoned shall form the juries for the trial of all criminal cases during the sessions of the court: Provided that if it shall happen that there shall not be the said number of 27 men qualified and liable to serve on juries, during any session of the said district court, then the sheriff shall still in like manner summon as many as there shall be.

5. The sheriff shall summon each of the jurors aforesaid by showing the man to be summoned, or in case he shall be absent from the usual place of his abode, by leaving with some person there inhabiting, a note or writing, under the hand of the sheriff, as near as is material in the form following, that is to say:—

Take notice, that you are hereby required to attend before the district court of Natal, to be holden at , the day of , at nine o'clock in the forenoon, and during the sitting of the said court, until you shall be discharged, to serve as a juror, upon pain of forfeiting for your default the sum of sterling, [inserting such sum as is, or shall be, by law, provided for such default.]

And the officer summoning such jurors shall make a return under his hand to the registrar of the said court of the manner of making every such summons; or else shall attend before the said court, and verify the same by his oath.

6. The Registrar of the said court shall, on the opening of each session of the said court holden for the trial of criminal cases, call

over the list returned by the said sheriff; and if any man, having been so summoned to attend as a juror, shall not attend, pursuant to such summons—or, being thrice called, shall not answer to his name—or, after his appearance, shall wilfully withdraw himself from the said court:—the court shall set such fine upon every such man so making default. (unless some reasonable excuse shall be proved by oath or affidavit) as the court shall think meet—not exceeding such sum as is, or shall be, by law, provided for such default.

7. The name of each man who shall be summoned, and appear, with the place of his abode and addition, shall be written by the registrar of the court, on a separate piece of paper—such pieces of paper being all, as nearly as may be, of equal size—and shall be put together in a box, to be provided for that purpose;—and, upon the trial of any case, the said registrar shall draw out nine of the said papers, one after another;—and, if any of the men whose names shall be so drawn shall not appear, or shall be challenged and set aside, then such further number, until nine men be drawn who shall appear, and, after all just causes of challenge allowed, shall remain as fair and indifferent: Provided that, if upon trial of any crime or offence before the said court, nine men, qualified and liable to serve on juries, being duly summoned, shall not appear to form a jury, or shall not, after all just cause of challenge allowed, remain as fair and indifferent,—then the said registrar shall draw out so many as there be, not being less than six; and the said number of nine, eight, seven, or six men, being sworn, shall be a jury for the trial of any criminal case in the said court.

8. Provided always, that, if it shall happen that nine men, qualified and liable to serve on juries, shall not have been summoned, or shall not appear, or shall not remain as fair and indifferent, after all just cause of challenge,—then the said sheriff shall, upon the order of the court for that purpose, return so many men of the bystanders, being qualified and liable to serve on juries, as shall be necessary to make up the lawful number of jurors; and the same order of proceeding shall be observed respecting the impanelling and challenging such jurors as in case of jurors summoned and returned in manner before provided.

9. All challenges shall be made as the name of the juryman is drawn, and before he is sworn: and the prosecutor, or the prisoner, in each case, may challenge and set aside the number of three, without assigning any cause for the said challenge; and the prosecutor, or the prisoner, may challenge and set aside any number of jurors, for any of the following causes, upon proof thereof to the satisfaction of the court,—that is to say:—

First,—Want of legal qualification.

Second,—Legal infamy.

Third,—Consanguinity or affinity within the fourth degree.

Fourth,—Favour to the prisoner, or the private prosecutor, or the party who, if the public prosecutor had not prosecuted, would have been entitled to prosecute.

Fifth,—Enmity to the prisoner.

10. The names of the men, sworn as jurors, in manner aforesaid, shall be marked on the list; and those names so drawn shall be kept apart by themselves, until such jury shall, by order of the court, be discharged; and then the said names shall be returned to the box, there to be kept with the other names remaining at that time, undrawn; and so, as often and as long as any case

remains to be tried; provided always, that, if any case shall be brought on to be tried before the jury in any other case shall have brought in their verdict, it shall be lawful for the court to order another jury to be drawn from the residue of the said papers, for the trial of the case which shall he brought on to be tried: Provided also, that, where no objection shall be made on behalf of the prosecutor or the prisoner, it shall be lawful for the court to try any case with the same jury that shall have previously tried, or been drawn to try, any other case, without their names being returned to the box and re-drawn,—or to order the name or names of any man or men on such jury, whom both parties may consent to withdraw, or who may be justly challenged, or excused by the court, to be set aside. and another name, or other names, to be drawn from the box, and to try the case with the residue of such original jury. and with such man or men, whose name or names shall be so drawn, and who shall appear and be approved as indifferent; and so, as often and as long as any case remains to be tried.

11. After the jury, in any case, has been charged with any prisoner, they shall be kept in some convenient situation in court apart by themselves, until the judge of the said court has summed up the evidence, and has left the case with the said jury; and, if any such jury shall desire to withdraw, for the purpose of considering their verdict, then they shall be kept by an officer of court, in some convenient place, apart by themselves, until they are agreed upon their verdict, or be discharged therefrom by the court; and the said officer shall be sworn, that he will suffer none to have access to them, or to speak to them, and that he will not speak to them himself, except to ask whether they are agreed upon their verdict, or to communicate between them and the court,

12. Whenever it may be necessary for the court to adjourn the further sitting of the court, during the trial of any case, it shall be competent to the court to direct the said jury to be removed to some convenient place in the neighbourhood of the court, during the said adjournment under the charge of a proper officer of the court.

13. Whenever it shall sufficiently appear to the court, before whom any prisoner is on trial, that the said jury, by reason of the death or bodily infirmity of any of them, shall be disabled from returning a verdict the said court shall discharge such jury, and shall cause a new jury to be impanelled, sworn, and charged with the said prisoner; and the trial shall be had, as if such first jury had not been impanelled.

14. Whenever the jury, in any case, has withdrawn, and been kept apart for the purpose of considering their verdict and shall not have returned the same before all the other criminal cases for trial at the session shall have been disposed of, and when it shall sufficiently appear to the court hat the said jury cannot agree upon a verdict, the court shall discharge such jury and shall cause a new jury to be impanelled, sworn, and charged with the said prisoner, and the trial shall be had, as if such first jury had not been impanelled.

15. The verdict of the jury, in all cases, shall be given by the foreman, in open court, and in the presence of all the said jury, and in the presence of the prisoner, and shall be thereupon recorded by the registrar of the said court; and the said registrar shall,

before taking the said verdict, ask, if they be all agreed thereupon, and whether they find the prisoner "GUILTY" or "NOT GUILTY;" and the said jury shall either pronounce a general verdict of "GUILTY" or "NOT GUILTY;" or else shall return a special verdict, finding the facts of the case; provided always, that the said jury may acquit the prisoner of a part of the charge against him, and find him guilty of the remainder.

16. All prosecutions in the district court, for any crime or offence, shall be by indictment or information, which shall be drawn as near as may be according to the rules promulgated by the supreme court of the colony of the Cape of Good Hope, in regard to the "forms of indictments and informations." When the indictment is in the instance of a private party, he shall be named and described with certainty and precision.

17. Every indictment shall be signed by the crown prosecutor appointed for the District of Natal, or by the private party prosecuting, as the case may be; and when the private party is unable to write, by one of the attornies duly admitted and enrolled to practise before the court, and authorized thereto by power of attorney, which he is required to produce to the registrar of the court before the trial of the cause.

18. The process of this court, for summoning the defendant to answer to any indictment, and for the service of the copy of the indictment on any defendant therein named, shall be by writ issued out by the crown prosecutor; and,—when the prosecution is at the instance of a private party,—by his attorney, and directed to the sheriff of this district, in the form following, or as near as may be thereto.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith; to the Sheriff of the District of Natal, greeting:—

We command you, that you summon [the defendant or defendants, —following the description in the indictment,] that he [or they] appear before our district court of Natal, at the session of the said court, to be holden in and for the said district at Pietermaritzburg, on the 15th day of next, and the following days, there to answer to a certain bill of indictment to be preferred against him [or them] by the crown prosecutor on our behalf, [or when the prosecution is at the instance of a private party or private parties, describing the prosecutor or prosecutors, as in the indictment,] and not to depart, until they be discharged in due course of law:—and serve upon the said defendant [or each of them] a copy of the said indictment, and the notice of trial endorsed on the same, or annexed thereto,—and return on that day to the registrar of this court this writ, with whatsoever you have done thereupon.

Witness H. CLOETE, Recorder of our said district court of Pietermaritzburg, the day of in the year of our Lord

W. H. Crown Prosecutor,
Prosecutor's Attorney.

J. B. Registrar of the District Court,

19. The prosecutor or his attorney shall endorse on, or annex to, every indictment and every copy of any indictment delivered to the sheriff for service thereof, a notice of trial;—which notice shall specify the court before which, and the particular session, and the

time when, he will bring the defendant to trial on the same indictment:—and which shall be, as near as may be, in the form following that is to say:—

C.D.

Take notice that you will be tried on this indictment (or on the indictment whereof this is a copy) at the sessions of the district court, to be held at Pietermaritzburg, on the day of next,

Dated the day of

W. H. Crown Prosecutor,

E. F. Attorney for Private Prosecutor,

20. The prosecutor shall deliver, or cause to be delivered, to the sheriff, together with the process of the court for summoning the defendant, the copy of the indictment, with notice of trial endorsed on the same or annexed thereto:—and, if there are more defendants than one, then as many copies and notices as there are defendants: and if the prosecution be at the instance of any private party, the said prosecutor shall also, at the same time, pay to the said sheriff his lawful costs and charges for serving the same.

21. The sheriff shall, as soon as may be after having received a copy of the indictment and notice of trial and the process of this court for serving the same, and eight days, at least, before the day therein specified for trial of the said defendant, by himself, or his deputy, or other officer, deliver to the said defendant the said copy and notice, and explain to him the nature and exigency thereof;—and, when the said defendant cannot be found, he shall leave a copy of the said indictment and notice of trial with some one of his household for him, at his dwelling house;—and, if none such can be found shall affix the said copy and notice to the outer and principal door of the said dwelling house.

22. When the defendant has been admitted to bail, and has elected and in his recognizance expressed a particular place, where he will accept service of any indictment and summons thereon, the copy of such indictment and notice of trial may either be served personally upon him, or left at the place so specified.

23. When it shall appear by the endorsement made on the writ by the officer executing the same, that the copy of the indictment and notice of trial have been duly served, in manner before provided.—and the defendant, on being thrice called, on the day appointed for the said trial, doth not appear,—it shall be competent for the prosecutor to move the court, if the defendant have been admitted to bail, that he and his sureties may be called upon their recognizances:—and in default of his appearance, that the same may be estreated; and it shall also be competent for the prosecutor to apply to the said court for a warrant for the apprehension of the said defendant.

24. If the prosecutor, having given notice of trial, shall not appear in court to prosecute or prefer the said indictment before the close of the session of that court, before which he gave notice for trial,—it shall be competent for the defendant to move the court to discharge him therefrom; and when the said defendant, or any other on his behalf, hath been bound by recognizance for the appearance of the said defendant, so to take his trial, then, that the said recognizance may be discharged; and where the indictment is at the instance of a private party, it shall also be competent to the defendant to move the court, that the said private prosecutor and his sureties shall be called on their recognizance, and, in default of his appearance, that the same may be estreated.

25. The summons, or process of this court, for procuring the attendance of any person before the said court, to give evidence in any criminal case, shall be sued by the registrar of the district court, or where the prosecution is at the instance of a private party, by his attorney, or by the defendant, or his attorney, and the same shall be delivered to the sheriff, at his office, in Pietermaritzburg, for execution thereof, together with so many copies of the summons as there are persons to be summoned.

26. The names of four witnesses may be inserted in one summons;—and they shall be described therein with such certainty that the summoning officer may be able readily to find them; and the form of the said summons shall be, as near as may be, according to the like form, established in this court, in and for civil cases.

27. When the prosecution is at the instance of a private person, he, or some one on his behalf, shall, at the time of delivering the said summons and copies thereof, also pay to the said sheriff his lawful costs and charges for executing the same,—together with such further sum or sums of money as the said private party intends the said sheriff to give or tender to the said witnesses respectively for their travelling expenses.

28. Service of any summons upon any person therein named to give evidence shall be made by delivering to him, or by leaving with some one of his household at his dwelling place when he cannot be found, a copy of the said summons; and the summoning officer shall, at the same time, show him, or the person with whom such copy is left, the original, and shall inform him of the exigency thereof,—and the said officer shall in all cases, endorse on, or annex to, the original, a return of the manner of his execution thereof, and shall transmit the same to the registrar of the court.

29. The prisoner to be tried upon any indictment shall be placed at the bar unfettered, unless the court shall see cause otherwise to order; and the indictment shall be read over to him by the registrar and explained, if need be, by that officer, or the interpreter of the court; and he shall be required to plead instantly thereto;—unless where the prisoner is entitled to service of a copy of the indictment, or bill of indictment, he shall object, and the court shall find, that he has not been duly served therewith.

30. The prisoner may plead—1st, that he is misnamed, or erroneously described in the indictment.—In which case if the court shall be satisfied by affidavit, or otherwise, of the truth of such plea, the court shall forthwith cause the indictment to be mended according to the truth, and shall call upon such party to plead thereto instantly, and shall proceed as if no such dilatory plea had been pleaded. —2ndly. That the court before which he is arraigned has not the jurisdiction in the case.—3dly. That the prosecutor hath no title to prosecute.—4thly. That he has been previously acquitted of the crime or offence with which he is charged in the indictment.—5thly. That he has been previously convicted of the said crime or offence, with which he is charged in the indictment.—6thly. That he has received a legal pardon for the said crime or offence.—7thly. That he is "not guilty" of the said crime or offence.

31. If any prisoner, being arraigned upon, or charged with, any indictment, will not answer directly to the indictment, the court shall, if it shall so think fit, order the registrar to enter a plea of "not guilty," on behalf of such prisoner; and the plea so entered shall have the same force and effect as if such prisoner had actu-

ally pleaded the same; or else the court shall thereupon cause a jury to be impanelled to try whether the prisoner be of sound or of unsound mind:—and, if he shall be found to be of unsound mind, the court shall make such order touching the safe custody of the said prisoner as to the court shall seem just and proper:—and if he shall be found of sound mind, the court shall proceed with the trial of the said prisoner.

32. The registrar shall note the plea of the said prisoner upon the indictment, or annex the same thereto.

33. Under the plea of "not guilty," the prisoner may object:—1st. That the crime or offence imputed to him is not one punishable by law.—2dly. That the facts alleged in the indictment do not amount, in law, to the offence charged against the prisoner.—3dly. All exceptions to the relevancy of the indictment, in any material part thereof.—4thly. That the crime or offence charged therein is barred by prescription.

34. The prisoner, upon the general plea of "not guilty," shall without any further form be deemed to have put himself upon the jury, for trial: but when he shall plead any special plea, the prosecutor shall forthwith verbally reply to the same, unless farther time be granted to him by the court for that purpose; and the registrar shall note such replication upon the indictment, or annex the same thereto,—and the court shall forthwith dispose thereof,—or such farther proceedings shall be had thereon, as to the court may seem meet.

35. Before the jury are charged with the trial of any prisoner, the court may amend the indictment in any matter of form, altering no matter of substance.

36. As soon as the prisoner shall have put himself upon the jury, for trial, and the court shall order a jury for the trial of such prisoner accordingly, or for the trial of any special issue arising upon the record, the said jury shall be thereupon called, sworn, and charged, in manner provided for that purpose.

37. The counsel, on the part of the prosecution may, before calling his witnesses, if he shall think fit, briefly state to the jury the facts and circumstances which he means to prove, *without comment thereon*,—and shall then proceed to call and examine his witnesses; and in like manner the counsel on the part of the prisoner may, if he mean to call any witnesses and if he think fit, briefly state to the jury the facts and circumstances which he means to prove, *without comment thereon*,—and shall then proceed to call and examine his witnesses.—After the evidence is closed, it shall be competent to the counsel for the prosecution to observe upon the evidence, and *after him, in like manner*, the counsel for the prisoner;—and the judge shall then sum up the evidence to the jury.

38. After the verdict returned by the jury is recorded, the prisoner or his counsel may then, or at any time before the court has passed sentence thereon, move, in open court,—the prisoner being there present,—any legal objection in arrest of judgment; or the court may arrest the same on any sufficient ground in law.

39. No judgment upon any indictment,—whether after verdict of the jury, or confession of the prisoner, or otherwise,—shall be stayed or reversed, except upon objections arising upon the indictment, as on record, and whereby the proceedings thereon are rendered erroneous or defective.

40. No such judgment shall be stayed or reversed, for want of

the averment of any matter unnecessary to be proved ; nor because any person or persons mentioned in the indictment is, or are, designated by name of office, or other descriptive appellation, instead of his, or their, proper name or names ; nor for omitting to state, or erroneously stating, the time or place at which the offence was committed, in any case in which time or place is not of the essence of the offence, provided that the court shall appear by the indictment to have had jurisdiction in the case ; nor on the ground of any objection to the form or relevancy of the indictment, which, if stated before the jury were impanelled, might have been amended by the court ; nor because of any error committed in summoning the jury, or any of them ; nor because any person who has served upon the jury has not been returned by the sheriff ; nor because of any objection which might have been stated as a ground of challenge of any of the jurors, except the objection of minority.

No. 33.—1846.] ORDINANCE [Nov. 25, 1846.

For amending the Ordinance No. 2, 1846, entituled "Ordinance for creating a Deeds' Registry Office for the District of Natal.

Preamble.

WHEREAS, in and by the first section of the Ordinance No. 2, 1846, entituled "Ordinance for creating a Deeds' Registry Office for the District of Natal," it is provided that it should and might be lawful for the Lieutenant Governor of the said district to appoint some fit and proper person to be and act as registrar of deeds for the said district : And whereas it is expedient that the appointment of such registrar as aforesaid should be vested in Her Majesty the Queen :—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of the said first section of the said Ordinance as empowers the Lieutenant Governor aforesaid to appoint a person to be and act as such registrar of deeds aforesaid, shall be and the same is hereby repealed ; and that it shall and may be lawful for Her Majesty the Queen, Her Heirs and Successors, to appoint, from time to time, some person to be such registrar of deeds as aforesaid. Provided always that nothing herein contained shall be deemed or taken so as to invalidate or affect any act of any person appointed under and by virtue of the Ordinance aforesaid, done or performed before the commencement and taking effect of this Ordinance. And provided also that, pending any such appointment as aforesaid by Her Majesty the Queen, the Secretary to Government for the district of Natal, or officer for the time being acting as such, shall be and act as the registrar of deeds for the said district

Registrar of Deeds at Natal to be appointed by the Queen.

2. And be it enacted that this Ordinance shall commence

Ordinance when to commence.

and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the Lieutenant Governor of the said district for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg.

No. 34,—1846.] ORDINANCE Dec. 14, 1846.

For levying Wharfage and other Dues in Cape Town, and for devoting them to the construction of a Harbour of Refuge in Table Bay, and for other purposes.

Preamble.

WHEREAS the construction of a harbour of refuge in Table Bay, by means of a breakwater to project from the shore at or near Fort Chavonne, must tend to secure the safety of life and property in the said bay, and to advance the interests of trade and commerce: And whereas it is intended to take up upon loan from, or under the guarantee of, Her Majesty's Government, the sum of £300,000, wherewith to commence and construct the said harbour: And whereas it is calculated that an annual sum of £5,500, or thereabouts, will suffice for the payment of the interest to accrue due upon the said sum of £300,000 pending the gradual expenditure of the same, and the final completion of the said harbour, and that an annual sum of £15,000, to be raised from and after such completion, will suffice within the term of thirty-one and one half years, or thereabouts, to liquidate the principal and interest of the said loan: And whereas arrangements are in progress for negociating the said loan in order to commence the making of the said harbour without delay, and it is therefore expedient to make provision in regard to the raising of the funds necessary for the payment first of the interest and ultimately of the principal of such loan: And whereas the wharfage and cranage dues now payable at Cape Town stand in need, in certain respects, of revision and amendment, and it is believed that the said dues, when so revised and amended, will yield a sufficient fund to pay and satisfy the entire of the interest upon the loan aforesaid for which it will be necessary to provide pending the completion of the said harbour: And whereas it is expedient to provide for the raising, after the completion of the said harbour, of the said annual sum of £15,000, which may most fitly and advantageously be done by enabling the Governor of this colony, for the time being, by proclamation, to raise the said revised and amended dues to such an extent, not exceeding double the former

dues, as may then be found necessary, and also to impose, should the said dues so raised fall short of the amount of £15,000 per annum, a certain tonnage duty upon ships frequenting the said harbour, in order to make up the said sum of £15,000:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the sixth day of January, 1847, so much of the Ordinance No. 8, 1834, entitled "Ordinance to abolish the present rates of dues payable at the public wharfs at Cape Town and Simon's Town, and to substitute others in lieu thereof," as relates to the public wharfs in Cape Town, or to any dues of wharfage or cranage to be payable to the Collector of Customs at Cape Town, shall be repealed, and the same is hereby repealed accordingly. Provided, however, that nothing herein contained shall be taken or construed so as to revive any law or duty repealed by the said Ordinance, or to alter or affect the said Ordinance so far as it relates to the town of Simon's Town.

Ordinance No. 8, 1834, so far as regards the public wharfs in Cape Town, or wharfage dues payable to Collector of Customs here, repealed.

2. And be it enacted, that from and after the sixth day of January aforesaid, there shall be levied by and paid to the Collector of Customs at Cape Town, upon all goods, articles, matters and things, landed or shipped in Table Bay the several dues of wharfage and cranage respectively set forth in the Schedule to this Ordinance.

Rate of wharfage dues to be payable after such repeal.

3. And be it enacted, that the several sums of money arising from the several dues aforesaid, or from the wharfage and cranage dues for the time being, shall not, while and so long as any part of the loan in the preamble to this Ordinance mentioned shall remain due and unpaid, form any portion of the general revenue of the colony, but shall constitute a separate and distinct fund to be applied to the purposes of the said harbour of refuge, and the repayment of the said loan; and the said fund shall, pending the repayment of the said loan, be managed and administered in such manner, and by such persons, as the Governor of this colony for the time being shall, from time to time appoint.

Proceeds of wharfage dues to be a separate fund.

Application thereof.

4. And be it enacted, that it shall and may be lawful for the Governor of this colony for the time being, at any time after the completion of the said harbour, but not sooner, to declare and announce by any Proclamation to be by him from time to time issued for that purpose, that the rates of dues in the schedule to this Ordinance respectively set forth shall, from and after such a day as shall in and by the said Proclamation be fixed and determined, berespectively raised to such an amount, not exceed-

Governor to have power to raise the rates of wharfage dues.

ing double the amount of the dues in the schedule to this Ordinance mentioned, as shall be found necessary for the purpose of raising annually a sum of £15,000, to be applied as in the preamble to this Ordinance mentioned; and from and after the day so fixed and determined, the rates of dues in the said Proclamation mentioned, and by the same imposed, and none other, shall be payable and paid until the said Proclamation shall be withdrawn; after which the several rates of dues in the said schedule mentioned shall again become payable and be paid. Provided always, that in and by such Proclamation as aforesaid, the rates of dues payable upon all articles matters, or things respectively, according to the table in the said schedule contained, shall as much as possible be raised in equal proportion, each to each, according to the respective amounts thereof; and provided also, that the said rates of dues shall be calculated as much as may be to yield no greater sum than £15,000 per annum. Provided, however, that nothing contained in any such Proclamation as aforesaid shall be invalidated or affected by reason that the proceeds of such rates or dues may exceed or fall short of the said last-mentioned sum.

Governor to have power to impose, if needed, a tonnage duty on certain ships.

5. And whereas it may so happen that the fund to arise from the dues aforesaid, after the same shall have been as aforesaid raised and increased, may prove insufficient to meet and satisfy the annual amount aforesaid required for the gradual liquidation and ultimate extinction of the loan aforesaid; and whereas it is expedient to make further provision on that behalf: Be it enacted, that it shall and may be lawful for the Governor of this colony for the time being, at any time after the completion of the said harbour of refuge, to impose, by any Proclamation to be by him from time to time issued in that behalf, a tonnage duty to be paid to the collector of customs aforesaid, by the master or other person having the charge or command of every vessel (not belonging to Her Majesty's Royal Navy, or the navy of any Sovereign Power) anchored, moored, or otherwise stationed within the limits of the said harbour, as the same shall by the governor aforesaid be announced and declared, which duty shall be calculated, as much as may be, so as to yield an amount which shall, together with the wharfage or cranage dues for the time being, make up annually the sum of £15,000 in the last preceding section and in the preamble to this Ordinance mentioned, and no more, and which duty shall be payable until such Proclamation shall be withdrawn. Provided, however, that no rate of wharfage, cranage due, or tonnage duty, imposed in or by any such Proclamation as

aforesaid, shall be invalidated or affected by reason that the proceeds arising from the said dues and duties exceed or fall short of the said sum of £15,000.

When the loan effected for constructing harbour shall have been paid off, all such Proclamations to be withdrawn.

6. And be it enacted, that when and as soon as the loan aforesaid shall have been wholly paid off and discharged, every Proclamation raising as aforesaid the dues of wharfage and cranage, and every Proclamation imposing any such tonnage duty as aforesaid, shall be withdrawn,—and every species of tonnage duty shall cease and determine.

If dues aforesaid shall fail to realise £15,000 per annum, the deficiency not exceeding £5,000 per annum a charge on customs' revenue.

7. And whereas, in order to afford due security for the regular and punctual payment of the said annual sum of £15,000, it is expedient yet farther to provide in case of need for the raising of the same: Be it enacted, that if, in any year, the wharfage and cranage dues aforesaid, and the said tonnage duty, shall together fail to realise the sum of £15,000, the deficiency shall be paid and made good from and out of Her Majesty's customs' revenue in this colony, and shall form and be a first charge upon the same. Provided, however, that the amount of such first charge shall not, in any year, exceed the sum of £5000.

Ordinance not to extend to Natal.

8. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance when to commence.

9. And be it enacted, that this Ordinance shall commence and take effect from and after the 6th day of January 1847.

SCHEDULE.

Table of Dues of Wharfage payable to Collector of Customs at Cape Town, on goods, articles, matters, and things landed or shipped in Table Bay.

Landed.	s.	d.
Liquids.—On every pipe, puncheon, butt, or other cask, of the capacity of 80 imperial gallons or upwards, and containing wine, spirits, or other liquors, the cask – – – –	2	0
On every hogshead, half puncheon, tierce, or other cask of the capacity of 40 imperial gallons and under 80 gallons, containing wine, spirits, or other liquors, the cask – –	1	6
On every quarter or other such cask of the capacity of 20 imperial gallons, and under 40 gallons, containing wine, spirits, or other liquids, the cask – – – –	1	0
On every barrel, anker, keg, other cask of less capacity than 20 imperial gallons, containing wine, spirits, or other liquids, the cask – – – – –	0	8
In jars, bottles, and other packages (not in bulk) each of the content of one imperial gallon or upwards, the imperial gallon – –	0	1

	s.	d.
In jars, bottles, and other packages (not in bulk) each of less content than one imperial gallon, the imperial gallon – – –		1½
Tea in all packages, per 100 lbs – – –	1	3
Coffee, sugar, pepper, sago, saltpetre, turmeric, tamarinds, spices, dates, and drugs in bags, the bag –	0	3
Rice in bags, the bag – – – – –	0	2
Wheat, barley, oats, rye, and other grain, in bags or bulk the imperial quarter – – –	0	6
Flour, the 196 lbs – – – – –	0	6
Tobacco, manufactured (except cigars) the cwt. –	0	6
Tobacco leaf, the cwt – – – – –	0	4
Cigars, the 1000 – – – – –	0	2
Manufactures, and all dry goods in cases, bales, or other packages, not otherwise described, measuring 60 cubic ft. or upwards, the pkg – –	6	0
40 cubic ft. and under 60 do.	4	6
30 do. and under 40 do.	3	6
20 do. and under 30 do.	3	0
10 do. and under 20 do.	2	0
5 do. and under 10 do.	1	6
2 do. and under 5 do.	0	9
under 2 do.	0	4
Hams or cheeses, when not in packages containing more than one of either,—the ham or cheese –	0	1
Paint in kegs, the ton – – – – –	6	0
Earthenware in crates, the crate – – –	2	0
Glass bottles, empty, the gross – – – –	0	6
Bricks, tiles, or slates, the 1000 – – –	3	0
Paving stones, the ton – – – – –	1	6
Cocoa nuts, the 1000 – – – – –	3	0
Rattans, the 100 bundles – – – –	2	6
Pitch and rosin, the cask – – – –	0	6
Coals, the ton – – – – – –	1	6
Mill stones, the stone – – – – –	2	6
Fir and Teak Timber, the load of 50 cubic ft. – –	2	0
Mahogany and Timber, not being fir or teak, the load of 50 cubic feet – – – –	3	0
Deals, planks, boards, battens, and all wood cut from the log (except staves) the load of 50 cubic feet – – – – –	3	0
Staves, viz., crown pipe the 1000 – – –	7	6
do. crown hogshead, do. – – –	5	0
do. other pipe, do. – – –	5	0
do. other hogshead, do. – – –	3	6
do. barrel & heading, do. – – –	2	6
Masts or spars, under 8 inches diameter, each – –	0	9
do. above 8 inches do. – –	3	6
Heavy goods, not otherwise described, the ton – –	2	6
Horses, mules, or asses, each – – – –	5	0
Calves, sheep, or pigs, each – – – –	0	3
Horned cattle, cows, bulls, and oxen, each – –	2	6
SHIPPED.		
Wine, spirits, lime juice, oil or other liquids, the 100 imperial gallons – – – –	1	0
Beef, pork, butter, candles, tallow, flour, meal, fruits, dried and green, the cwt – – –	0	2

	s.	.
Wheat, barley, rye, oats, bran, peas, beans, and lentiles, the imperial quarter – – –	0	6
Hay, the 100 lbs – – – – –	0	2
Fish, dried and pickled, the ton – – –	2	6
Hides, of horses or horned cattle, the 100 – –	4	0
Skins, calf, goat, seal, or wild animals, the 100 –	0	6
Sheep skins, the 100 – – – – –	0	3
Bones, hoofs, or glue pieces, the ton – – –	1	0
Horns, the 1000 – – – – –	2	0
Ivory, the 100 lb – – – – –	0	6
Ostrich feathers, the package – – –	2	6
Wool, the 100lb – – – – –	0	6
Argol, aloes, gum, or wax, the ton – – –	1	6
All other articles not enumerated or otherwise described, the ton – – – – –	1	0
If measurement goods not otherwise enumerated or described, the 40 cubic feet – – –	1	6
Horses, mules, or asses, each – – –	4	6
Horned cattle, each – – – – –	1	6
Sheep, goats, or pigs, each – – – –	0	2

Exemptions.

1st.—All public stores, naval or military baggage, and personal baggage of passengers.

2nd.—All goods coastwise, whether shipped or landed, except imported goods upon which wharfage has not been once paid.

3rd.—Ships' stores outwards.

4th.—All goods exported, upon which wharfage had been paid upon importation.

No. 1,—1847.] ORDINANCE [Jan. 11, 1847.

For Removing Vessels Stranded in the Ports and Harbours of this Colony.

Preamble.

WHEREAS ships and vessels which have been run or driven on shore in the ports and harbours of this colony, are sometimes wholly abandoned there by the persons interested therein or entitled thereto, to the great detriment of such ports and harbours: And whereas it is expedient to provide for the removal, within a reasonable time, of all ships and vessels which now are, or which at any time hereafter may be, stranded or aground in any of the ports or harbours aforesaid:—Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all ships or vessels, or the hulls or remains of any ships or vessels, now lying and being stranded or aground, below high water mark, in any of the ports or harbours following, that

Vessels now stranded in certain Ports to be removed within 4 months from commencement of this Ordinance; and vessels stranded hereafter within 4 months next after the event.

is to say,—Table Bay, Algoa Bay, Simon's Bay, Mossel Bay, and Port Beaufort,—shall, within four months next after the comencement and taking effect of this Ordinance be removed by those entitled thereto or interested therein; and that all ships or vessels, or hulls or remains of any ships or vessels, which shall, at any time after the commencement and taking effect of this Ordinance, be stranded or aground below high water mark as aforesaid, in any of the said ports or harbours, shall, in like manner, be removed within four months next after the same shall have been so stranded or run aground. Provided always, that nothing in this Ordinance contained shall extend to any ship or vessel, in regard to which any attempt shall be in progress, or be about to be made, to get the same again afloat; nor to any craft laid or drawn up upon the beach, for repair or security, until required for sea.

Proceedings to be taken in regard to vessels not removed within the prescribed period.

2. And be it enacted, that every ship or vessel, or hull or remains of any ship or vessel, which shall be found lying and being stranded and aground, below high water mark as aforesaid, after the expiration of the period in which the same should have been removed, shall thereupon become the property of Her Majesty the Queen; and all former owners or other persons interested therein shall thenceforth be absolutely divested of all right or title to, or interest in, the same; and it shall and may be lawful for the harbour master, or port captain, if such there be, of the port or harbour in which the same shall be found; or if there be none such, then for any person thereto authorised by the civil commissioner of the division in which such port or harbour shall be situated, to remove or cause to be removed, with all convenient speed, such ship, or vessel, or hull, or remains thereof; and to sell or cause to be sold, by public auction or private sale, as shall be deemed most expedient, the materials so removed; and in case the proceeds of such sale of any ship or vessel, or hull or remains thereof, which shall become stranded or aground as aforesaid at any time after the commencement of this Ordinance, shall be insufficient to pay the expenses thereof, together with the reasonable costs and charges of the removal of the materials sold,—then such harbour master, port captain, or other person shall be entitled to recover for the use of Her said Majesty, in her colonial treasury, from any person in this colony, who shall have taken on him the sale or other disposition of the hull of the said vessel, her tackle, apparel, furniture or stores, or any part thereof, the amount of such reasonable costs and charges or so much thereof as shall still remain unsatisfied; not exceeding, however, in any case, the proceeds realised

by such person from such sale, or the value of the property disposed of otherwise than by the sale thereof.

Limits of the Ports aforesaid, how to be defined.

3. And be it enacted, that the limits of the certain ports and harbours aforesaid shall, for the purposes of this Ordinance, be such as shall from time to time be fixed by the Governor of this Colony for the time being, in any Proclamation or Proclamations to be by him issued for that purpose; and such limits respectively, when so proclaimed, shall bedeemed and taken as if herein set forth.

Provisions of this Ordinance may by Proclamation be extended to Ports other than those aforesaid.

4. And be it enacted, that it shall and may be lawful for the Governor aforesaid, by any Proclamation to be by him issued for that purpose, to extend the provisions of this Ordinance to any other port or harbour in this colony, not being in the district of Natal; and to define the limits of such port or harbour; and thereupon all and singular the provisions of this Ordinance shall extend to such port or harbour, precisely as if the same, and the limits thereof, had been mentioned and set forth in this Ordinance.

Lieutenant Governor of Natal enabled to apply the provisions of this Ordinance to that District.

5. And be it enacted, that it shall and may be lawful for the Lieutenant-Governor of the District of Natal, by any proclamation to be by him issued for that purpose, and affixed to, or posted upon, some public place at Pietermaritzburg, to extend the provisions of this Ordinance to any port or harbour in the said District; and to define the limits of such port or harbour; and thereupon all and singular the provisions of this Ordinance shall extend to such port or harbour precisely as if the same and the limits thereof had been mentioned and set forth in this Ordinance. Provided always, that all sums of money received or recovered, in regard to any such lastmentioned port or harbour, or any vessel or remains found therein, shall be paid into the treasury of the said District.

Ordinance when to commence.

6. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 2,—1817.] ORDINANCE [Feb. 23, 1817.

For facilitating the Apprehension, and regulating the mode of Conveyance, of Deserters from Her Majesty's Land Forces within the District of Natal to their respective Corps; and for the more prompt payment of Rewards and Expenses consequent thereupon.

Deserted Soldiers to be apprehended.

WHEREAS it is expedient to give every facility for the apprehension and conveyance of deserters, and for the payment of rewards and expenses consequent thereupon:

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the passing of this Ordinance, it shall and may be lawful for any constable, or other individual, to apprehend, or cause to be apprehended, within the District of Natal, any person reasonably suspected to be a deserter, and to bring him forthwith before the nearest magistrate or justice of the peace, who is hereby empowered to examine such suspected person; and if it shall appear to such magistrate or justice that he is a soldier, and deserter from the corps, or regiment, to which he belongs, such magistrate or justice shall forthwith cause him to be conveyed to the nearest public prison, or, if in the vicinity of a military post, shall cause him to be delivered to the officer commanding at such post, who shall give his receipt for such supposed deserter.

How reward for apprehension to be obtained.

2. And be it further enacted, that such magistrate or justice shall forthwith transmit to the deputy adjutant general at Cape Town, a description return of such supposed deserter, according to the form, marked (A.,) in the Schedule hereunto annexed, accompanied by vouchers, in duplicate, according to the form marked (C.) in the Schedule hereunto annexed, in support of the claim to the reward for apprehension, and to the remuneration of expenses, (payable by the pay-master at the head quarters of the regiment or corps to which such supposed deserter is presumed to belong;) and on receipt thereof, and after it shall be proved that such person is a deserter, the amount shall be forthwith made payable to the magistrate or justice before whom such deserter was brought, to whom notice to that effect shall be given by the military secretary of the commander-in chief, and shall, on receipt thereof by such magistrate or justice, be paid, on demand, to the party entitled to receive the same.

Schedule—Form (A.)

DESCRIPTION RETURN of , committed to Confinement at , on the Day of , as a Deserter from the Battalion of the Regiment of ,

Age.	Size		Complexion.	Color of		Marks.	Probable date of Desertion. from whence.	Name, occupation, and Address of the Person by whom apprehended.	Particulars of the evidence upon which the Prisoner is committed.	Whether the Prisoner confessed before the Magistrate or Justice that he is a Deserter.
	Feet.	Inches.		Hair	Eyes.					

I do hereby certify, that the prisoner has been duly examined before me, as to the circumstances herein stated, and has declared in my presence that he* a Deserter from the before-mentioned Corps.

——— Signature and Address of Magistrate or Justice
——— Signature of Prisoner.
——— Signature of Informer.

*Insert "*is*" or "*is not*," as the case may be.

Form (C.)

Paymaster of the Regiment,
(On account of the Public Service,)
Dr. to (Magistrate's or Justice's Name and Residence,) to be by him paid to (Name of the person who apprehended the Deserter.)

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For the apprehension of Deserter from the Regiment.

For apprehension,	£3	0	0
To Gaoler,	0	1	0
,, Days' Subsistence, at 6d. per day.			

Received from Paymaster , Regiment, the Sum of Sterling, in payment of the above Account, for which I have signed duplicate Receipts.

No. 3,—1817.] ORDINANCE [March 5, 1817.

For authorising the Vestry of St. Paul's Church, Rondebrsch, to raise a sum of money not exceeding £2000, to enlarge the Building of the said Church.

Preamble.

Whereas it is expedient to enlarge the building of the Church of Saint Paul, for the better accommodation of the Inhabitants of Rondebosch, in the Cape District; And whereas there are no funds in the possession of the vestry thereof applicable to that purpose; And whereas it is desirable that a sufficient sum of money should be raised by way of mortgage, on the security of the pew rents of said buildings, to defray the expense of the enlargement aforesaid:—

Vestry may raise £2000 on Mortgage of Pew Rents.

1. Now, therefore, be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council thereof, that from and after the promulgation hereof, it shall and may be lawful for the vestry for the time being of St. Paul's Church of Rondebosch aforesaid, to raise, on loan, any sum or sums of money not exceeding £2000, and specially to hypothecate the pew rents of the buildings of the said Church, as and for a security for the repayment of the said loan and the interest thereof.

Who to execute Mortgage Deed.

2. And be it enacted, that it shall and may be lawful for the chairman and churchwardens of the said vestry for the time being, being authorised thereto by a resolution of the said Vestry, to appear before the registrar of deeds of this colony, and then and there to execute a bond or bonds for the repayment of the capital sum of all monies raised as aforesaid, together with the accruing interest thereof; provided that the said capital sum does not in the whole exceed the sum of £2000; and the act of the said chairman and churchwardens in respect thereof shall be deemed and taken to be the act of the said vestry.

Monies raised to be deposited.

3. And be it enacted, that all monies raised as aforesaid shall on the receipt thereof be deposited in one of the banks of this colony, in the joint names of the chairman and churchwardens aforesaid, and no sum or sums of money shall be withdrawn therefrom, otherwise than upon the respective signatures of the said chairman and churchwardens.

Account to be kept.

4. And be it enacted that an account of all the expenses incurred and monies outlayed in the enlargement of the said church shall be kept by the said chairman and churchwardens, and submitted to the examination and audit of the said vestry, at every duly convened meeting thereof, during the continuance of the alterations aforesaid.

Vestry to provide for the accruing interest and for the eventual repayment of the principal of the loan.

5. And be it enacted that it shall be incumbent on the said vestry, and they are hereby required, after the payment of the interest on any loan raised on the security of the pew rents, and providing for the necessary repairs and other incidental expenses of the said church, to set apart the remainder of the annual revenue of the said church to provide a fund for the payment of the accruing interest and the eventual repayment of the capital sum or sums of money raised as aforesaid, until the same are wholly paid off and discharged; an account whereof shall be kept under the direction of the said vestry, which said account, and the account hereinbefore required to be kept by the chairman and churchwardens aforesaid, shall be

subject to all the same regulations as are by law provided for the general church fund accounts of the said vestry.

No. 4,—1847.] ORDINANCE [March 11,—1847.

To indemnify all persons in regard to certain Acts done during the recent existence of Martial Law.

Preamble.

Whereas, by reason of the hostilities in which Her Majesty the Queen became involved, in or about the month of April 1846, with the Kafir Tribes adjacent to the Eastern Frontier of this Colony, and the irruption into the said colony of numerous armed bands belonging to the said Tribes, it became necessary for the then Governor of this Colony, General Sir Peregrine Maitland, K.C.B., to proclaim Martial Law, to be in force throughout this Colony; and whereas by a Proclamation of the said Governor, bearing date the 22nd of April, 1846, it was accordingly proclaimed and directed, that from and after the promulgation thereof, Martial Law should be in force throughout the whole Colony for all cases and in all matters connected with the assembling, embodying, conducting, and supplying Her Majesty's Forces, and the certain inhabitants in the said Proclamation mentioned. And whereas, by a certain other Proclamation of the said Governor, bearing date the 13th of January, 1847, after reciting the Proclamation aforesaid, it was proclaimed and directed, that from and after the promulgation thereof, Martial Law should cease to be in force in any part or portion of this colony: And whereas during the time, or part of the time, that the said Martial Law was in force in this Colony, military operations were being carried on against the tribes in certain territories adjacent to this Colony, and it became and was necessary for the said Sir Peregrine Maitland, and other persons acting under him, to direct, authorize, do, and perform, as well within this Colony as in the territories aforesaid, certain acts, matters, and things, which were not justifiable by the strict rules and forms of law, but which were necessary for the public service: And whereas it is expedient that the said Sir Peregrine Maitland, and all persons acting under him, should be indemnified, in respect of such orders, directions, acts, matters, and things:—

Sir Peregrine Maitland and all Persons acting under him indemnified for all acts done during the existence of Martial Law.

Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the promulgation hereof, the said Sir Peregrine Maitland, and all persons acting under

him, shall be, and they are hereby, jointly and severally, indemnified, freed, and discharged, from and against all actions, suits, and prosecutions whatsoever, which might be brought or instituted in any of the Courts of this Colony, for or on account, or in respect of all or any acts, matters, and things whatsoever, done, ordered, directed, or authorised within this Colony, by the said Sir Peregrine Maitland, as such Governor aforesaid, or as Commander-in-Chief of Her Majesty's Forces, or by any person or persons acting under him in any command or capacity, military or civil, during the existence within this Colony of such Martial Law as aforesaid, or which were done, ordered, directed, or authorised, during the same space of time, within any of the territories aforesaid, which territories shall, for the purposes of this Ordinance, be deemed and judged of precisely as if the same had been, when the said proclamation of the 22nd of April 1846 was promulgated, a part or portion of this Colony; so only, and provided always, that such acts, matters, and things, shall have been done, ordered, directed, or authorsed *bona fide*, necessarily and properly, in furtherance and execution of the objects for which Martial Law was proclaimed as aforesaid, which shall be presumed to be the case until the contrary be proved by the party complaining; and provided also that nothing in this Ordinance contained shall extend or apply to any suit or action in regard to which there shall be between the parties contestation of suit at the time of the commencement of this Ordinance; all of which suits or actions, if any, shall be heard, and determined, precisely as if this Ordinance never had been passed.

No. 5,—1847.] ORDINANCE [March 30,—1847.

For the creation of Municipal Boards in the Towns and Villages of the District of Natal.

Preamble. WHEREAS it is expedient that due provision should be made for the better regulation of certain matters and things of a local nature within the several districts, towns, and villages in the District of Natal, and that municipal boards should be constituted and established therein for that purpose: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that from and after the commencement and taking effect of this Ordinance it shall and may be lawful for any resident magistrate or

justice of the peace, within the limits of his jurisdiction, and he is hereby required, upon a requisition made to him in writing to that effect by any number of resident householders not less than fifteen, and resident respectively within one mile of any one central place which shall be specified in the said requisition, to call a meeting of householders, being such within the meaning of this Ordinance, and resident within the limits aforesaid, to determine whether municipal regulations shall be adopted for the town, village, or place proposed to be erected into a municipality.

Meeting of Householders to determine whether or not Municipal Regulations shall be adopted,—how to be called.

2. And be it enacted, that three weeks' notice, at the least, of the time and place of holding such meeting shall be given by the resident magistrate or justice of the peace calling the same, by a printed or written notice affixed to some conspicuous place or places of public resort within the limits aforesaid.

Notice of such Meeting how to be given.

3. And be it enacted, that the chairman who shall preside at any meeting assembled as hereinbefore directed, shall read, or cause to be read, the requisition whereupon, the meeting shall have been summoned, and shall require such resident householders as aforesaid assembled thereat, to determine, by a majority of votes, whether municipal regulations shall, or shall not, be adopted and acted upon within the said intended municipality.

Duty of chairman at such Meeting.

4. And be it enacted, that if at any such meeting it shall be determined by a majority of votes, that municipal regulations shall be adopted, then and in such case the resident householders assembled at such meeting shall forthwith proceed to elect and appoint a committee of so many of such resident householders as aforesaid, as the said meeting shall deem expedient, to frame and draw up municipal regulations.

Committee to form regulations.

5. And be it enacted, that the committee so to be elected and appointed shall be chosen by such resident householders assembled at such meeting, by a majority of votes.

Committee how to be chosen.

6. And be it enacted, that the committee so chosen as aforesaid shall forthwith proceed to frame and draw up such municipal regulations as they may deem expedient, and shall submit the same, when prepared, to a meeting of resident householders, residing within the limits of the municipality as fixed by such regulations, to be called by the said committee upon seven days' notice: Provided always, that such committee shall submit such regulations to such meeting as aforesaid, within one month from the date of their appointment, otherwise the said committee shall be *ipso facto* dissolved, and a new committee shall

Duty of such Committee upon election.

then and in every such case be chosen in manner, and for the purpose aforesaid, at a meeting to be called by any such resident magistrate or justice of the peace as aforesaid, to whom such dissolution of the committee shall have been notified.

Committee to form regulations.

7. And be it enacted, that in such regulations it shall be the duty of such committee to fix the limits of the municipality, and to divide the municipality into wards, if necessary, and to fix the number of commissioners and wardmasters for the municipality or the several wards thereof, and to make rules for the classification and valuation of the immoveable property therein, and to frame all other regulations for every purpose of general utility within such municipality as shall appear to require regulations, and to impose penalties for the breach of any such regulations.

Meeting to which regulations shall be submitted.

8. And be it enacted, that at the meeting to which such regulations as aforesaid shall be submitted by such committee, any resident magistrate or justice of the peace residing at or near such proposed municipality, shall preside as chairman: provided, however, that such magistrate or justice shall not be a member of the said committee: and when there shall not be any such resident magistrate or justice of the peace not being a member of such committee present, then and in every such case any such resident householder as aforesaid, not being a member of such committee, present at such meeting, may be elected to preside as chairman at such meeting.

Mode of preceding at ach Meeting.

9. And be it enacted, that at such meeting the question shall be put by the chairman on each and every clause contained in the regulations submitted by the committee, *seriatim*, and afterwards on the whole of the regulations jointly; and a majority of votes shall decide whether such clause, or the whole of the regulations jointly, as the case may be, shall or shall not be adopted.

How to proceed in regard to such regulations.

10. And be it enacted, that the regulations adopted at such meeting shall forthwith be transmitted to the Lieutenant Governor of the district for the time being, for the approval, amendment, or disallowance thereof, of the said Lieut-Governor, with the advice of the Executive Council; and in case such regulations shall be approved, they shall be published by proclamation posted upon or affixed to some public place in Pietermaritzburg, and shall thereupon become as legal, valid, and effectual, as if the same had been inserted herein;—and in the event of the said regulations being amended by the said Lieut.-Governor, with the advice of the Executive Council, the regulations so amended shall be forthwith transmitted to the chair-

man of such meeting as last aforesaid, and in his absence to any resident magistrate or justice of the peace residing in or near the said intended municipality, who shall forthwith, upon a notice of not less than seven days, call a meeting of such resident householders as aforesaid, and shall, by a majority of votes, decide whether the said regulations, so amended, shall be adopted or not; and if the regulations be adopted, the chairman of such meeting shall forthwith communicate such adoption to the said Lieut.-Governor, who shall forthwith publish the same in manner and form as last aforesaid, and upon such publication, the same shall become as legal, valid, and effectual, as if the same had been inserted herein.

How to proceed in case Lieut.-Governor shall disallow any Regulations or in case Householders shall not adopt regulations amended by such Lieutenat Governor.

11. And be it enacted, that if the said regulations, when submitted to the said Lieut.-Governor, shall be disallowed by him, with the advice of the executive council, or if such regulations, after being amended by the Lieut.-Governor, with the advice of the executive council, shall not be adopted by the majority of votes at the meeting of the resident householders aforesaid, then and in every such case the committee shall again *de novo* frame other municipal regulations,—and the like proceedings shall be taken for having the same submitted to, and adopted by, and, when amended by the Lieut.-Governor, decided upon by the resident householders of the municipality, and submitted to, and approved or amended by, the said Lieut.-Governor, with the advice of the executive council, as by the provisions of the last preceding section of this ordinance are prescribed to be taken as to the municipal regulations therein mentioned, and so on until such regulations as have been adopted by the resident householders in manner aforesaid shall have been approved of by the said Lieut.-Governor in manner aforesaid, or when amended by him in such manner, shall have been adopted by such resident householders in manner aforesaid.

Mode in which regulations may be amende

12. And be it enacted, that it shall be lawful for the commissioners of any municipality, and they are hereby required, upon a requisition made to them in writing to that effect by any number of such resident householders as aforesaid, not less than fifteen, to call a meeting of such resident householders as aforesaid, upon seven days' notice, to be given in manner aforesaid, for the purpose of adding to, amending, or repealing the existing regulations, or any of them, by a majority of persons present and entitled to vote at such meeting; and the said regulations, after being so reformed, shall be forthwith transmitted by the said commissioners to the lieut.-governor, for

the approval or disallowance thereof, or of any part thereof, of the said lieut.-governor, by and with the advice of the executive council; and such of the said reformed regulations as shall be approved of, shall be published in manner and form as aforesaid, and the said reformed regulations, so approved of as aforesaid, shall thereupon become as legal, valid, and effectual, as if the same had been inserted herein, and the former regulations shall become null and void: Provided always, that nothing in any municipal regulations contained shall be repugnant to, or inconsistent with, the true intent and meaning of the provisions of this ordinance.

Meeting to choose Commissioners, how to be put in nomination.

13. And be it enacted, that so soon as such original regulations as aforesaid shall have been published as aforesaid, the resident magistrate of the division shall, and he is hereby required, by a notice of not less than ten days in manner hereinbefore provided, to call a meeting of such resident householders as aforesaid, residing within the limits of such municipality, to be holden for the election of so many commissioners as shall have been specified in the said regulations to carry the same into effect; and the said commissioners for the municipality or the wards thereof respectively, shall be elected by a majority of votes of such resident householders as aforesaid present at such meeting; and any such resident magistrate or justice of the peace shall preside as chairman at such meeting.

Qualification of Commissioners.

14. And be it enacted, that any person being the proprietor of landed property situated within the municipality, of the value of not less than £200, shall be eligible to be elected a commissioner for the purposes of this ordinance.

Commissioners to vacate office at the end of three years; but may be re-elected.

15. And be it enacted, that at every meeting for the election of any commissioner or commissioners, every candidate shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other such qualified person; and every vote which at any such election shall be given for any person who has not been so proposed and seconded, shall not be taken into account in such election, but shall be wholly void and ineffectual: And that the votes shall be taken by ballot, and the person or persons having the greatest number of votes shall be elected commissioner or commissioners, as the case may be: Provided always, that when by reason of any two or more condidates having obtained an equal number of votes, any ballot shall be indecisive as to them, such candidates shall forthwith be balloted for the second time, and he or they who shall obtain the greatest number of votes, shall be elected commissioner or

commissioners as the case may be: but if such second ballot shall also be rendered indecisive, by reason of an equality of votes, the chairman of the meeting shall decide the election by his casting vote.

Commissioners to vacate office at the end of three years; but may be re-elected.

16. And be it enacted, that every person who shall be elected a commissioner in any municipality in manner aforesaid, shall go out of office at the end of the third year from the said first election; and in place of such commissioners so going out of office a like number of other commissioners, to be elected as hereinafter provided, shall come into office, and remain in office for three years; and at the expiration of such last mentioned term of three years, shall in like manner go out of office and be succeeded by other commissioners, who shall remain in office for a like term of three years, and so on for ever; provided always, that any of such out going commissioners shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, any thing herein contained to the contrary notwithstanding.

Meetings to elect successive Commissioners, how to be called.

17. And be it enacted, that on the Monday immediately preceding the day on which any such term of three years shall expire, a meeting shall be holden, at such hour and place as shall be duly notified by the said commissioners, for the election of commissioners for the three year next succeeding: and such election shall proceed in such manner as is hereinbefore provided for the election of the first commissioners under this ordinance.

Vacancies how created and how to be filled up.

18. And be it enacted, that any commissioner who shall cease to possess his due property qualification within the municipality, or shall absent himself therefrom for any period exceeding six months; or shall become bankrupt or insolvent; or shall become incapacitated from fulfilling the duties of his office by mental or bodily infirmity or disease; or who shall accept any office of emolument under the appointment of the commissioners relating to the municipality, shall *ipso facto* vacate his office;—and in case any one so elected a commissioner shall die; or become disqualified in manner aforesaid; or shall resign or refuse to accept the office of commissioner; or shall become bankrupt or insolvent; or in case of any casual vacancy happening in any manner whatever in such office, notice shall be forthwith given by the acting commissioners to the resident magistrate of the division or any justice of the peace in or near the said municipality, who shall forthwith, by a notice of not less than ten days, call a meeting of such resident householders as aforesaid, resident within such municipality, for the purpose of filling up such vacancy or vacancies; and the person then elected

shall serve until the next general election of commissionere.

How any irregularity in holding meetings for electing Commissioners.

19. And be it enacted that in case it shall happen that by reason of any failure or neglect, or any other cause whatever, any meeting for the election of a commissioner or commissioners shall not be duly and regularly holden, or that at any such meeting the commissioner, for the purpose of choosing whom such meeting was convened, shall not be duly elected, then, and in every such case, the resident magistrate of the division or any neighbouring justice of the peace shall, as soon as any such event shall have been duly notified to him in writing by any three or more resident householders of the municipality in which such event shall have occurred, by a notice of not less than seven or more than fourteen days, call a meeting of the householders of such municipality for the purpose of electing such commissioner in the same manner as is hereinbefore directed with respect to the first election of commissioners under the provisions of this ordinnnce ; and the commissioner or commissioners who shall have been in office next before the time when such event shall have occurred, shall remain and continue in office until his or their successor or successors shall in the manner herein provided have been duly elected, upon which the former shall, provided his or their regular term of service shall have expired, forthwith go out of office, and be succeeded by the person or persons newly chosen.

Meetings of Commissioners, when to be holden.

20. And be it enacted, that the commissioners for the time being shall meet at least once in every month, and at such other times, if any, as may be specified in the municipal regulations for the time being ; and at every such meeting it shall be lawful for any person to appear and prefer any complaint which he may think proper to make concerning any matter or thing done by force or in pursuance or under pretence of the provisions of this ordinance, or of the said municipal regulations, or concerning anything which shall have been left undone contrary to any of the said provisions.

Special Meetings of Commissioners.

21. And be it enacted, that such commissioners shall meet at all other times, and so often as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, when three commissioners only shall have been appointed, and in all other cases for any two commissioners, by writing under his or their hands, to summon, upon at least forty-eight hours' notice, the commissioners for any special purpose thr ein named ; and that at all meetings of such commissioners, any number, not less than one third of the whole

number, when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed, then not less than two commissioners, shall constitute a quorum for transacting business.

Commissioners to appoint a treasurer.

22. And be it enacted, that it shall be lawful for the said commissioners, elected in any municipality for the time being, acting in pursuance of any municipal regulations to that effect, and they are hereby authorised and required, to appoint during pleasure such treasurer and other officers as shall be specified in any such regulations, and to remove and displace the same.

Security to be taken from tresaurer, or appointment void.

23. And be it enacted, that it shall be lawful for the said commissioners, and they are hereby required, to take security from the treasurer to be appointed by virtue of this ordinance, before he enters on the duties of his office, for the due execution of his office of treasurer, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time. And in case any such treasurer shall neglect or refuse, for the space of one week next after his appointment, to give such security to the satisfaction of the said commissioners, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes, and the said commissioners shall, within three weeks, then next, assemble and appoint some other fit and proper person to the office of treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid.

Treasurer to deliver true accounts with vouchers.--Proceedings to be taken in case of default.

24. And be it enacted, that every such treasurer, and other officer, appointed by virtue of this ordinance, shall, under his hand, and at such time or times, and in such manner as the said commissioners shall direct, deliver to the said commissioners, or such person as they shall appoint, true and perfect accounts, in writing, of all matters and things committed to his charge by virtue of this ordinance, and also of all monies which shall have been by such officer received by virtue or for the purposes of this ordinance, and of how much thereof shall have been expended or disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such monies as shall remain due from him to the treasurer for the time being, or to such person or persons as the said commissioners shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or refuse to deliver up the vouchers relating to the same, or to make payment as aforesaid, or shall

refuse or wilfully neglect to deliver to the said commissioners, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said commissioners, by notice in writing, under the hands of any two or more of the said commissioners, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power, relating to the execution of this ordinance, or to give satisfaction to the said commissioners, or such other person or persons, as aforesaid, respecting the same, then and in every such case, upon complaint made by the commissioners, or by such person or persons as they shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to the recorder of the district of Natal, or to the resident magistrate of the division within which such treasurer or other officer resides, such recorder or resident magistrate may and he is hereby authorised and required to summon the officer so refusing or neglecting, to appear before him;—and if it shall appear to the said recorder or magistrate, upon the hearing of the case, that any monies remain due from such officer, or if it shall appear to such recorder or magistrate that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this ordinance remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such recorder or magistrate shall, and he is hereby required to commit such offender to the common gaol or house of correction for such district, there to remain without bail, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such monies as aforeseid, and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said commissioners, or to such other person or persons as aforesaid: but no such offender shall be kept or detained in such common gaol or house of correction under such commitment as aforesaid for any longer space of time than three calendar months.

No such proceedings to discharge any surety.

25. And be it enacted, that no prosecution or commitment under the provisions of this ordinance, of any treasurer or other officer, or person to be appointed under the powers of this ordinance, shall acquit or discharge any surety or security that shall or may have been taken by, or given to, the commissioners for the due and faithful execution of his or their office, or the payment of the

monies received, or to be received, by him or them respectively.

No Commissioners to receive salaries or fees.

26 And be it enacted, that no person, elected and appointed under and by virtue of this ordinance a commissioner for the purpose of carrying into effect the provisions thereof, shall have or receive, or be entitled to have or receive, any salary, or shall exact, take, or accept any fee or reward whatsoever, for or on account of anything done or to be done by him by virtue of this ordinance, or on any account whatsoever, relative to putting this ordinance into execution.

Commissioners how to sue and be sued.

27. And be it enacted, that in any action or suit, which shall or may be brought for the recovery of any penalty, or sum of money, due or payable by virtue of this ordinance, or for or in respect of any property, moveable or immoveable, vested in the said commissioners, or for any other matter or thing relating to this ordinance, by or against the said commissioners, it shall and may be lawful for the said commissioners, to sue or to be sued by the style or description of "The Commissioners for the Municipality of————": Provided always, that the said commissioners shall always be reimbursed and paid, out of the monies to arise by virtue of this ordinance, all such costs, charges, and expenses as they shall be put to or become chargeable with by reason of bringing or defending such action or suit, and shall not be personally answerable or liable for the payment of the same, or any part thereof, unless such action or suit shall arise in consequence of their or any of their own wilful neglect or default.

Proceedings of Commissioners to be entered in a book.

28. And be it enacted, that all acts, orders, and proceedings of the said commissioners or any of their meetings, shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the commissioners then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as *prima facie* evidence of all such acts, orders, and proceedings upon any appeal or trial, or information, or any proceeding, civil or criminal, and in any court or courts of law or equity whatsoever.

Books of accounts to be kept.

29. And be it enacted, that the said commissioners shall, and they are hereby required, from time to time, to order and direct a book or books to be provided and kept, in which shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this ordinance, and of the several articles, matters, and things, for which such sums of money shall

have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said commissioners, and of every such resident householder as aforesaid, without fee or reward; and the said commissioners and other persons aforesaid, or any of them, shall or may take copies of, or extracts from, the said book or books, without paying for the same; and in case the said commissioners shall refuse to permit, or shall not permit, the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such commissioner shall forfeit and pay any sum of money not exceeding *five pounds* for each default, to be paid to the funds of the municipality.

Accounts to be made up to 31st December in every year.

30. And be it enacted, that in the month of January, in every year, a true account shall be made, in writing, of all monies received and paid by virtue of this ordinance during the preceding year, ending on the 31st day of December, in every year; and a copy or duplicate of such account, verified on oath before any justice of the peace by the said commissioners, or any two of them, shall be deposited with the said commissioners, and shall be open to the inspection of all parties interested.

Commissioners to call meetings for assessing rates.

31. And be it enacted, that it shall and may be lawful for the said commissioners, when they shall see fit, and they are hereby required, upon a requisition made to them in writing to that effect, by any number of such resident householders as aforesaid, not less than fifteen, to call a meeting of such resident householders as aforesaid, upon seven days' notice to be given in manner aforesaid, for the purpose of assessing any such rate or rates on the immoveable property situate within the municipality, and to endure for such period, not exceeding twelve months, as the majority of persons present and entitled to vote at such meeting shall deem necessary for all or any of the purposes of this ordinance: Provided always, that nothing herein contained shall prevent any person who feels himself aggrieved by any such assessment from appealing therefrom to any court having jurisdiction, which shall, if necessary, testify the same in regard to the person so appealing. And provided also that no rate shall be imposed upon any immoveable property belonging to Her Majesty the Queen, and not occupied as dwelling houses, nor on public prisons or residences for police, nor on any building appropriated to the public worship of God or to gratuitous education.

Collector to be appointed.

32. And be it enacted, that after the rates to be levied by virtue of this ordinance shall have been assessed in

manner aforesaid, it shall and may be lawful for the said commissioners to appoint a collector, for the purpose of collecting the amounts due and payable upon the property so assessed by the proprietors thereof: and the said collector is hereby authorised to demand and receive the amounts so to be collected: provided always, that the said collector shall be furnished with an order, under the hands of the said commissioners, or any two of them, directing the said collector to levy the amount mentioned in the said order; and provided also, that the said order shall specify the rate in the pound at which the sum mentioned therein shall be computed.

Collector to pay over monies collected to the treasurer.

33. And be it enacted, that the said collector to whom any such orders as aforesaid shall be issued, shall pay over the amount collected under such order to the treasurer to be appointed in the said municipality under this ordinance, within forty days from the delivery of such order to the said collector; and at the time of making any payment to the said treasurer, the said collector shall deliver to him a note in writing, signed by him, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount; and the receipt of the said treasurer, specifying the amount paid to him by the collector, shall be a sufficient discharge to the collector for such amount, and shall be allowed as such in passing his account with his municipality.

Rates how to be recovered.

34. And be it enacted, that if the amount of any rate which under the provisions of this ordinance shall have been assessed on any immoveable property within any municipality, shall not, on demand made by the person duly authorised to collect the same, be paid by the occupier of such property, or by the proprietor thereof, it shall be lawful for the said commissioners, and they are hereby empowered, to sue either the said occupier or the said proprietor, separately, or both of them in one and the same action, each for the whole, before any competent court, and to obtain the judgment and process of such court, for the recovery of the same, reserving to such occupier and proprietor respectively, such relief against each other as they may be lawfully entitled to; Provided always, that no person shall, as occupier of any such immoveable property, be liable to pay or to be sued for any rate which had been assessed on the same in respect of any period, or which had become due and payable at any time, before such person entered on the occupation of such property. And that every person who, as occupier of any such property, shall at any time have become liable to pay any rate which may have been

assessed thereon shall continue to be liable, and may be sued in manner aforesaid, for the same, notwithstanding that such person shall have ceased to occupy such property. And provided also, that the payment of any rate assessed on and due in respect of any such immoveable property as aforesaid, by either the proprietor or occupier of the same, shall free and discharge the other from all claim and demand for the payment of such rate, as far as regards the municipality aforesaid.

Commissioners to appoint watchmen, &c.

35. And be it enacted, that the said commissioners, acting in pursuance of any such regulations as aforesaid, are hereby empowered, from time to time, to appoint and employ such number of able-bodied watch-house keepers, serjeants of the night, watchmen, patrols, street-keepers, and other persons, as shall be sufficient for the proper protection of the inhabitants, houses, and property, streets, and other places within the limits of the municipality, by day and by night, and provide all such watchmen, watch-house keepers, serjeants of the night, patrols, and persons aforesaid, with such clothing, arms, ammunition and weapons, and shall assign to them such beat and rounds and duties, and appoint such hours for them to be on duty, and also make such rules, orders, and regulations relative to such watchhouse keepers, serjeants of the night, watchmen, patrols, street-keepers and other persons, and their duty, as shall be deemed fit.

Watchmen, &c., to act as constables.

36. And be it enacted, that all watchmen, serjeants of the night, and patrols, shall act as constables while in the execution of the powers and authorities of this Ordinance, and they are hereby invested with, and shall have and enjoy, the like powers and authorities, privileges, and immunities, and shall be subject and liable to such and the like penalties and forfeitures, as any constable or constables is or are invested with, or shall have or may have and enjoy, or is or are or shall be subject or liable to by law.

Commissioners to provide fire engines.

37. And be it enacted, that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time to provide and keep up fire-engines, with pipes and other utensils proper for the same, for the use of the respective municipalities

To erect lamp posts, &c.

38. And be it enacted, that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time to cause such lamp-irons, or lamp-posts, or other posts, to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or

inclosures, (doing as little damage as may be practicable thereto), or to be put up or erected in such other manner within all or any of the said roads, streets, and places, within the limits of the respective municipalities, as shall be deemed proper, and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp-irons and lamp-posts, as shall be necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with oil, or otherwise, during such hours as shall be necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed, as shall be necessary for watching all or any of the streets, roads, and places within the limits of the municipality.

To lay water pipes.

39. And be it enacted, that it shall and may be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time to provide and to carry or to lay any pipe or pipes for the conveyance of water, to which the inhabitants of the municipality shall at any time have or acquire a common right, from any reservoir, river, or spring, to any house, building, or other place, within the limits of the municipality, and the said commissioners shall, acting in pursuance of any such regulations as aforesaid, and they are hereby authorised, from time to time, to make such regulations touching the quantity of water to be supplied to the inhabitants, and the time or times at which such supply is to be received, as shall be proper and necessary, and the rates which shall be payable for the same.

To erect bridges, &c.

40. And be it enacted, that the said commissioners, acting in pursuance of any such regulations as aforesaid, shall, and they are hereby empowered to cause to be made, provided, erected, and built, such bridges, sluices, dams, reservoirs, water-courses, pumps, wells, fountains, drains, and ditches, as shall be deemed necessary within the municipality, and shall cause the same to be kept at all times in good and sufficient repair.

To cause streets, &c. to be kept in repair.

41. And be it enacted, that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered to cause the public streets, roads, and places within the limits of the municipality, to be at all times kept in good and sufficient repair, and, as occasion shall require, to cause such new streets and roads to be made within the limits aforesaid, as may be legally made and shall be necessary for the public use, and to be kept at all times in like good and sufficient repair.

To establish markets.

42. And be it enacted, that it shall and may be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered from time to time, as occasion may require, to establish within the limits of the respective municipalities, a market or markets, for the sale of cattle, fish, poultry, vegetables, fruit, and the like, and to cause suitable houses or other buildings to be built and erected, for the convenience of persons attending such market or markets, and to cause the same to be kept in good and sufficient repair, and to enforce reasonable market dues, and also to enforce such municipal regulations as shall be made, and recover such fines as shall be imposed thereby, for ensuring order and cleanliness, on the part of the persons attending such market.

To regulate the pasture lands.

43. And be it enacted, that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby empowered, from time to time, to enforce all municipal regulations which shall be made for the due and proper care of the common pasture lands the property of any municipality, and which regulations shall specify and regulate the quantity of cattle which each inhabitant shall be allowed to keep and depasture on the said common lands, and of what kinds; and also, to recover fines which shall be imposed by the said regulations on any person contravening the same; and to erect one or more pounds in such municipality, and to make all necessary or expedient pound regulations: Provided always, that the said commissioners shall not be authorized or permitted, without the consent of the Lieutenant Governor for the time being, to dispose of, alienate build upon, inclose, or cultivate, any such common pasture lands, nor suffer any other person to build upon, inclose, or cultivate the same; and any such alienation by sale, gift, or otherwise, shall be, and is hereby declared to be, null and void.

To assize weights and measures, &c.

44. And be it enacted, that it shall and may be lawful for the said commissioners, and they are hereby authorized to enforce all such regulations as aforesaid, which shall be framed relative to the assizing and examining of weights and measures,—the time when, and the places where, cattle may be slaughtered, or driven to be slaughtered, and the state and condition of the slaughter-houses, —the registration and improper driving or loading of carts and carriages,—the undue obstruction of the streets by carriages, repairing of houses, or otherwise,—the confining or killing of dogs, pigs, and fowls, and to recover all fines imposed by the said regulations for contravening the same.

45. And be it enacted, that if any person shall wilfully break, throw down, spoil, or damage any watch-house, or watch-box, or lamp, or lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, or shall break, spoil, or damage any building, the property in which is by the provisions of this Ordinance vested in the said commissioners, or shall wilfully break or damage any public water-course, bridge, sluice, dam, reservoir, pump, well, fountain, drain, or ditch, or shall wilfully waste any public water within the limits of any municipality, it shall be lawful for any person or persons who shall see the offence committed, to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Ordinance, and without any warrant, to deliver him, her, or them, to any constable, who is to keep him, her, or them, in safe custody, and with all reasonable dispatch to convey him, her, or them, before the resident magistrate of the district within which any such offence shall have been committed, or any justice of the peace, having jurisdiction; and if the party accused shall be convicted of any such offence by such resident magistrate, he, she, or they, shall forfeit any sum not exceeding *two pounds* for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby.

Penalty for wilfully injuring municipal property.

46. And be it enacted, that it shall be lawful for the said commissioners, acting in pursuance of any such regulations as aforesaid, and they are hereby authorised, to remove, put down, and abate, all nuisances of a public nature within any such municipality as aforesaid, and which may tend either to injure the health, destroy the comfort, or in any way affect the rights of the inhabitants at large, and if need be, to proceed at law against any person or persons so committing any such nuisance, for the abatement thereof, and for damages; and further that the said commissioners shall, and they are hereby required to cause all streets, water courses, drains, roads, and places, within and such municipality, to be kept clean and free from dirt or rubbish: and any person convicted, upon the complaint made by the said commissioners, of throwing dirt or rubbish into any such street, road, water course, drain, or place as aforesaid, shall forfeit and pay any sum of money not exceeding two pounds; and such forfeiture shall be paid into the municipal treasury.

Commissioners to abate nuisances.

47. And be it enacted, that it shall and may be lawful for the said commissioners from time to time to enter into any contract with any person or company what-

Commissioners may enter into contracts.

soever, for any work to be done and performed, or for any materials to be furnished to and for the said commissioners, by virtue and for the purposes of this ordinance, which contract shall specify the work to be done and the price to be paid for the same, and the time when the work shall be completed, and the penalty to be suffered in case of non-performance thereof, and shall be signed by two or more of the said commissioners, and also by the person or persons contracting, which contract, or a copy thereof, shall be entered in a book to be kept for that purpose; but no contract above the value of thirty pounds shall be entered into, unless fourteen days' notice be previously given and affixed to some public place within the municipality, expressing the intention of entering into such a contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered and presented to the commissioners at a certain time and place in such notice to be mentioned: Provided always, that if the said commissioners shall be of opinion that it will not be advantageous to contract with the person offering the lowest price, it shall be lawful for the said commissioners to contract with such other person or persons, as they shall think proper; and such person or company so contracting, shall give security for the due performance thereof to the satisfaction of the commissioners: provided, however, that no commissioner shall be allowed, either directly or indirectly, to become a contractor, or to tender for any contract, either in his name, or in the name of, or jointly with, any other person, on pain of forfeiture of all his share and interest in such contract for the benefit of the municipality, and shall also be considered to have vacated his office as commissioner, *ipso facto*, and be ineligible to be elected at any future period to serve as a commissioner.

Commissioners may purchase or hire property.

48. And be it enacted, that the said commissioners, acting in pursuance of any such regulations as aforesaid, may, and they are hereby authorised and empowered to treat with the owner or owners, and occupier or occupiers, of any houses or buildings, lands and grounds, for the purposes of this Ordinance, for such sum of money or yearly rent, or for such time as to them shall appear reasonable.

What property vested in municipality.

49. And be it enacted, that the property of and in all lands, streets, roads, and buildings, to which the inhabitants of any municipality shall at any time have or acquire a common right, shall be vested in the commissioners of such municipality for the time being.

50. And be it enacted, that the property of and in all

lamps, lamp irons, lamp-posts, watch-houses, watch-boxes, bridges, sluices, dams, pumps, wells, fountains, sewers, drains, water courses, market-houses, pipes, posts, chains, pales, and rails, in, about, or belonging to the said streets, and places within the limits of the rerpective municipalities and of and in all the iron, timber, stone, bricks, and other materials and furniture, and things of, in, and belonging thereto, (except when the same shall be otherwise regulated by contract withthe said commissioners,) shall be vested in the said commissioners, and may be sold and disposed of by them from time as they shall be permitted or required to do, in pursuance of any such regulations as aforesaid; and the said commissioners are hereby authorised and empowered to bring, or cause to be brought, any criminal action, against any person or persons who shall steal, break, or otherwise damage any of the buildings or other things, the property in which is hereby vested in the said commissioners; and in all such actions it shall be, and be deemed and taken to be, sufficient to state, generally, that the article or thing, for or on account of which such action shall be brought, is the property of the commissioners, without particularly stating or specifying the name or names of all or any of the commissioners.

Property in lamps, &c. vested in commissioners

51. And be it enacted, that all offences committed in contravention of this Ordinance, or of any municipal regulation, may lawfully be prosecuted in the court of the resident magistrate for the division within which the same shall have been committed; and if any person shall be duly convicted of any such offence, and shall not pay or satisfy the amount of the fine imposed upon him, it shall be lawful for the resident magistrate before whom the case was tried, to sentence such offender to any period of imprisonment, not exceeding three months; and the amount of all such fines then recovered, shall be paid into the municipal treasury: Provided always, that it shall be lawful for the commissioners, in each particular case, to determine, award, and direct, what share, if any, of the amount of any fine imposed in respect of any conviction for any such offence as aforesaid, shall be paid to any person who may have given information concerning the same.

Offences against this Ordinance, how to be prosecuted.

52. And be it enacted, that every person who is the occupier of any house, warehouse, counting-house, shop, or office, either as proprietor or renter, of the yearly value or rent of not less than five pounds sterling, shall be, and be deemed and taken to be, a resident householder within the meaning of this ordinance, and that at the several meetings of such resident householders as aforesaid, here-

Who shall be deemed to be a resident householder.

inbefore appointed and authorised to be holden, every such resident householder who shall be personally present, shall have and be entitled to one vote and no more; provided always, that no female shall be deemed to be a resident householder within the meaning of this ordinance, or be competent to vote at any meeting, or to be elected to any office; and if any question shall arise at any meeting as to the qualification of any individual to be deemed such resident householder as aforesaid, the chairman of such meeting shall inquire into, and summarily determine the same, and his decision shall, for the purpose of such meeting, but no farther, be final and conclusive.

Joint occupiers entitled to be considered resident householders.

53. And be it enacted, that where any premises as aforesaid shall be jointly occupied by more persons than one as proprietors or renters, each of such joint occupiers shall be entitled to be considered a resident householder within the meaning of this ordinance, in respect of the premises so jointly occupied, in case the yearly value or rent of such premises shall be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than five pounds for each and every such joint occupier.

Who to preside at meetings of householders.

54. And be it enacted, that unless where provision had been hereinbefore made to the contrary, at any of the meetings hereinbefore mentioned, and appointed or authorised to be holden, such person as may be elected by the majority of persons present entitled to vote, shall preside as chairman, and shall have and be entitled to a casting vote, and shall determine in the first instance upon the eligibility of any candidate proposed at any such meeting.

Ordinance not to impare private rights.

50. And be it enacted, that nothing herein contained shall extend or be construed to extend to injure or impair the rights which any person or persons may have in, or in respect of any of the matters aforesaid; and in every case in which any such commissioners as aforesaid shall commit any act under and by virtue of this Ordinance, or of any municipal regulation, by which the right of any person or persons is injured or impaired, such commissioners shall be liable to make compensation to such person or persons for the same: Provided always, that nothing herein contained shall be deemed, construed, or taken to extend to render the said commissioners personally, or any of their goods and chattels, (other than such as may be in them in pursuance of this Ordinance,) liable to the payment of any sum of money, as or by way of compensation or satisfaction, in the cases in which such compensation or satisfaction is hereby directed to be made by the said commissioners.

56. And be it enacted, that all the necessary costs, charges, and expenses attending the carrying the provisions of this Ordinance into effect, shall be paid out of the money authorised to be received by the commissioners, under the provisions of this Ordinance. Expenses of this Ordinance how to be paid.

57. And be it enacted, that in the construction of this Ordinance, the term "Lieutenant Governor" shall mean the officer for the time being acting as such, and that the term "Resident Magistrate" shall mean the officer for the time being acting as such, and that the singular number shall, when necessary to give effect to the enactments of this Ordinance, include several persons or things as well as one person or thing, and that the masculine gender shall include female as well as males. Interpretation clause.

59. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be appointed for the commencement thereof, by any Proclamation to be by the Lieutenant Governor aforesaid for that purpose issued, and posted upon, or affixed to, some public place in Pietermaritzburg. Ordinance when to commence.

No. 6,—1847.] ORDINANCE [March 30,—1847.

For enabling the Lieutenant Governor of Natal to make provision for regulating the dealing in, and possession of, Fire Arms and Ammunition, within the said District.

WHEREAS the state and position of the district of Natal in regard to the number and nature of its population, as well as to the several tribes or sorts of people surrounding or adjacent to the said district, are such as to render the free and unrestricted dealing in, and possession of, fire arms and ammunition dangerous to the general peace and safety: And whereas no legal provision at present exists for restricting or regulating such dealing or possession, and it is expedient to enable the Lieutenant Governor of the said district, with the advice of the Executive Council thereof, to frame and promulgate in manner and form as hereinafter in that behalf provided such rules and regulations touching and concerning the dealing in, and possession of, fire arms and ammunition, within the said district, as he shall find to be necessary or deem to be expedient: Be it enacted by the Governor of the Cape of Good Hope with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Lieutenant Governor for the time being of the district of Natal, Preamble.

Lieut. Governor authorised to regulate by Proclamation, the dealing in and posses-

sion of fire arms, &c. under certain conditions and restrictions.

with the advice of the Executive Council thereof, from time to time to frame such rules and regulations as he shall think necessary or expedient, touching and concerning the several and respective matters following, or any of them, that is to say,—the importation, landing, removal, and storing of fire arms or gunpowder, and the establishment and management of gunpowder magazines, and the fixing and defining by whom, and to whom, at what places, and in what numbers and quantities respectively, fire-arms and gunpowder may respectively be sold, bartered, or otherwise disposed of, and by whom, and under what restrictions it may be carried or conveyed, and settling and determining the fees and charges to be payable for, or in regard to, any permits or licences by the said rules and regulations required to be taken out, and the compelling the registration and production in such manner and form as shall by the said rules and regulations be deemed expedient and established, of all fire arms in the possession of any of the inhabitants of the said district, and the fixing and limiting of all penalties and forfeitures to be consequent upon the contravention of such rules and regulations or any of them, and declaring the manner of recovering and disposing thereof, and the extent of any imprisonment to which any person shall become liable upon non-payment of any such penalty, and, generally, all or any of the objects regarding fire arms, gunpowder, or other ammunition, embraced or contemplated in regard to those parts of the colony other than the said district, by the Ordinances No. 23, made and passed on the 11th of September 1826; No. 81, made and passed on the 23rd of December 1830; and No. 7 of 1834, made and passed on the 3d December 1834; and any other objects of an analogous description description: Provided that nothing in any such rules and regulations contained, shall extend to any fire arms, gunpowder, or other ammunition belonging to Her Majesty the Queen; and provided that no fee or charge imposed in or by any such rule or regulation in regard to any such permit or licence as aforesaid, shall exceed the fee or charge now payable for, or in respect of, the same species of permit or licence if enjoined or required by any of the Ordinances aforesaid, and that no fee or charge for any permit or licence, act or thing, not subjected to any fee or charge by some one of the said Ordinances, shall exceed Twenty Shillings: And provided, that no fine or forfeiture or term of imprisonment, imposed for or in regard of any act or omission by any such rule or regulation, shall exceed the fine or forfeiture or term of

imprisonment (if any) imposed for or in regard of the same species of act or omission by some one of the said Ordinances; and that no penalty imposed by any such rule or regulation (or in regard of any act or omission not subjected to any penalty by any of the said Ordinances shall be other or greater than a fine not exceeding £10, together with the forfeiture of the certain fire arms or ammunition in regard to which such act or omission shall have taken place, nor shall any term of imprisonment which may be made alternative upon the non-payment of any such fine, exceed one calendar month, with hard labour.

Lieut. Governor may provide differing regulations for different districts.

2. And be it enacted, that it shall and may be lawful for the Lieutenant-Governor aforesaid, in framing the said rules and regulations, to provide, should he see cause so to do, distinct rules and regulations accommodated to the peculiar circumstances of each or any of such portions or subdivisions of the said district as he shall determine and describe.

Proclamations under this Ordinance, how to be issued.

3. And be it enacted, that all such such rules and regulations as aforesaid shall be promulgated by the said Lieutenant-Governor, by his Proclamation or Proclamations to be from time to time issued in that behalf, and posted upon or affixed to some public place at Pietermaritzburg, in each of which Proclamations some certain time shall be fixed for the commencement, and taking effect thereof, from and after which time all subsisting rules and regulations contained in any subsisting Proclamation, shall become to all intents and purposes as legal, valid, and effectual as if the same were herein inserted as so many clauses or provisions of this Ordinance.

Lieut. Governor may prohibit the issue of gunpowder

4. And be it enacted, that it shall and may be lawful for the Lieutenant Governor aforesaid, at all times when he shall see fit, by any Proclamation to be by him issued and published in manner and form as aforesaid, to prohibit the issue of gunpowder from all or any of the gunpowder magazines within the said district; and any person who shall issue or receive any gunpowder from any magazine, to which such prohibition shall extend, shall for every act of issuing or receiving, incur and be liable to any penalty not exceeding £500, and in default of payment shall be imprisoned with, or without hard labor, for any time not exceeding six months; and the gunpowder issued shall be forfeited to Her Majesty the Queen.

Ordinance when to commence.

5. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall fixed and appointed for the commencement thereof, by any Proclamation to be by the said Lieutenant Governor

aforesaid for that purpose issued and published in manner and form as the certain other Proclamation hereinbefore mentioned.

No. 7,—1847.] ORDINANCE [Mar. 30, 1847.

For enabling the Lieutenant Governor of Natal to establish Public Pounds within the said District.

Preamble.

WHEREAS it may be expedient to establish Public Pounds within the District of Natal: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Lieutenant Governor of the said district, with the advice of the executive council thereof, by any Proclamation to be by him, from time to time, issued for that purpose, and posted upon, or affixed to some public place in Pietermaritzburg, to establish a public pound at any place, not being a Municipality, when the same shall seem to be required; and to provide all necessary regulations for the same, and for determining the course to be pursued in regard to the seizing, securing, conveying, and impounding of cattle, or other animals found trespassing; and for determining or providing means for the ascertaining and payment of the amount of the damage done by such cattle or other animals, and for fixing the manner and form in which cattle or other animals impounded, and not released, shall be sold; and for applying for the proceeds of any such sale; and generally for all matters and things in regard to which provision shall be made by any law or Ordinance regulating Public Pounds, in those parts of this colony, other than the said district; and all other matters and things connected therewith, which the said Lieut. Governor, with the advice aforesaid, shall find it necessary to regulate. Provided always, that no fine or penalty imposed, or fixed payment directed to be made, by any such regulation as aforesaid, in regard to any offence or act of trespass, or other injury, defined or described by the Pound Laws, for the time being, of those parts of this colony, other than the said district, shall exceed the fine, penalty, or fixed payment respectively, if any, provided by the said laws for or in respect of a similar act or offence; and provided also, that all other fines, penalties, or fixed payments, shall, as much as may be, be fixed and settled, so as to bear a just proportion to those for which a certain maximum is above provided, and to each

Lieut. Governor authorised to establish Pounds by Proclamation, under certain conditions and restrictions.

other; but no fine, penalty, or fixed payment, imposed or directed by any such regulation, shall be deemed to be invalid or illegal by reason that it is not, or may be supposed not to be, conformable to either of the directory clauses or provisions hereinbefore contained.

2. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any Proclamation to be by the Lieutenant Governor aforesaid, for that purpose, issued and posted, or affixed in manner and form as hereinbefore provided, in regard to the Proclamation in the first section of this Ordinance mentioned.

Ordinance when to commence.

No. 8,—1847.] ORDINANCE [March 30, 1847

For enabling the Lieutenant Governor of Natal to establish Markets within the said district.

WHEREAS it may be expedient to establish Markets in certain villages and other places convenient for holding the same within the district of Natal: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Lieutenant Governor of the said district, with the advice of the Executive Council thereof, by any proclamation to be by him issued from time to time for that purpose, and posted upon or affixed to some public place in Pietermaritzburg, to establish a market at any village or place where the same shall appear to be required, and to fix the limits of the same, and the dues to be taken thereat, and to provide all necessary regulations for such markets, and such regulations to alter, and the said markets to abolish, when and so often as he shall deem expedient; provided always that no such market shall be established, at or in any municipality; and that in case any village or place at or in which any such market shall be established shall at any time afterwards become a municipality, then such market shall become and be, *ipso facto*, abolished.

Preamble.

Lieutenant Governor authorised to establish Markets, by Proclamation, under certain conditions and restrictions.

2. And be it enacted, that this ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any proclamation to be by the Lieutenant Governor aforesaid for that purpose issued, and posted or affixed in

Ordinance when to commence.

manner and form as hereinbefore provided in regard to the proclamation in the first section of this Ordinance mentioned.

No. 9,—1847.] ORDINANCE [March 30, 1847.

For Regulating the Sale of Wines, and Spirituous and Fermented Liquors within the District of Natal.

Preamble.

WHEREAS it is expedient to provide for and to regulate the sale of Wines, and Spirituous and Fermented Liquors, by wholesale and retail, within the district of Natal: Be it therefore enacted by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof; that it shall and may be lawful for any person or persons nominated and appointed in that behalf from time to time by his honor the Lieut. Governor of the District of Natal, by any Proclamation by him issued and published in manner and form as hereinafter directed in regard to the certain proclamation in the 42nd section of this ordinance mentioned, and such person or persons are hereby respectively required, to grant licences in manner and form hereinafter provided, authorizing the sale of wines, spirituous liquors, liqueurs, malt liquors, ginger beer, and spruce beer, to such persons residing within the division for which such officer or person shall be appointed to act, as shall make such applications, and comply with such regulations, as are respectively hereinafter mentioned and set forth.

Persons to be appointed by Lieutenant Governor to issue licences.

Licences to be wholesale or Retail.

2. And be it enacted, that every such licence as is in the last preceding section mentioned shall be either a wholesale licence, or a retail licence.

Form of Licence.

3. And be it enacted, that the said licences respectively shall be in form corresponding with the forms thereof respectively in the schedule to this ordinance in that behalf set forth.

Wholesale dealing: minimum quantity.

4. And be it enacted, that it shall and may be lawful for any person who shall take out a wholesale licence as aforesaid to sell any of the liquors in the 1st section of this Ordinance mentioned, in any quantity not less than two gallons, imperial measure, if in cask, or than twelve reputed quart or twenty-four reputed pint bottles, if in bottle; and that it shall and may be lawful for any person who shall take out a retail licence, as aforesaid, to sell any of the said liquors in any quantity less than two gallans, imperial measure, if in cask, or less than twelve

Retail dealing; minimum quantity.

reputed quart or twenty-four reputed pint bottles, if in bottle.

Costs of Licence.

5. And be it enacted, that all such licences as aforesaid, whether wholesale or retail, shall be issuable for the periods, and be paid for at the rates or values following, and none other, that is to say :—

For every such licence respectively, to endure for one whole year - -	£20	0	0
For every such licence respectively, to endure for six months - - -	11	0	0
For every such licence respectively, to endure for three months. - -	6	0	0

Wholesale Licence.

6. And be it enacted, that it shall and may be lawful for any person desirous of taking out such a wholesale licence as aforesaid, to apply for the same to the officer or person so nominated as aforesaid and reqnired to grant the same, who shall thereupon grant the same accordingly. Provided that every such officer or person shall, with all convenient speed, transmit to the Secretary to Government of the District, the name of every person receiving any such wholesale licence, the place or premises where the licensed dealing is to be carried on, and the date of the issuing of such licence.

Licence, where necessary.

7. And be it enacted, that lodging houses, club houses, eating houses, or other places of accommodation, entertainment, or refreshment, at which any of the liquors in the 1st section of this ordinance mentioned are supplied on the premises, to inmates or others, and charged or paid for either directly or indirectly, and as part of the board or lodging to be provided, or otherwise, shall, except as hereinafter is excepted, be treated and considered as houses or places requiring that the persons keeping the same respectively should take out the licence aforesaid for selling by retail. Provided always, that no person who shall receive or accommodate any boarder or lodger, or other inmate, for any period certain not less than one month, and who shall not supply to such boarder, lodger, or other inmate, any wines or spirituous or fermented liquors, other than those of the growth or manufacture of the colony of the Cape of Good Hope, shall be required to take out any licence whatsoever.

Mode of application for Retail Licence.

8. And be it enacted, that every person being desirous of taking out any such retail licence as aforesaid, shall make an application, in writing, to the resident magistrate of the division in which he resides, setting forth the nature or description of licence required, and the place or premises where the calling or business to be authorised by

such licence is intended to be carried on. And when, and as often, as any person shall apply for such retail licence, such person shall, in his said application, set forth whether he intends to keep an inn, hotel, or boarding house, or intends to sell liquors not to be drunk or consumed on the premises, or intends to keep a tap, canteen, or public house, or intends to carry on any two or more of the said sorts or descriptions of trade or calling.

Magistrate to post notice at certain places.

9. And be it enacted, that as often as any resident magistrate shall receive any such application as is in the last preceding section mentioned, from any person who shall state his intention to keep a tap, canteen, or public house, such resident magistrate shall affix, or cause to be affixed, in some conspicuous place at or in his office, and at or on the gate or entrance of some place of public worship (if such there be within seven miles of the seat of magistracy) and at or on the gate or entrance of the public prison, a notice, containing the name of the applicant, the description of the house or premises in which the calling or business aforesaid is intended to be carried on, and the day on which the question of the granting of such licence will come on before such resident magistrate for determination, and such notice shall be affixed for the space of seven days at least next before the day last mentioned.

Magistrate shall decide objections in open Court.

10. And be it enacted, that upon the day appointed for the determination of the question of the granting of any such licence as aforesaid, the resident magistrate shall, in open court, proceed to determine the same; and shall hear the objections, if any, of any householder resident near the house or premises mentioned in the notice aforesaid, whether grounded on the character, misconduct, or unfitness of the applicant, unfitness or inconvenience of the place or premises, or number of previously licensed houses already in the neighbourhood; and such magistrate shall also hear what shall be urged by the applicant in answer to such objections; and shall, if necessary, administer an oath to the said parties, or either or any of them, or any other persons who shall be deemed competent to give any evidence or information touching the matter in question, and shall grant or refuse the licence applied for as the circumstances of the case shall require.

No person to hold more than one Licence.

11. And be it enacted, that no person shall be allowed to take out more than one licence to authorise the keeping of a tap, canteen, or public house, and if any one person shall take out more than one such licence, every licence

taken out by such person shall be, *ipso facto*, null and void.

Certificate of Magistrate to authorize Licence to be granted.

12. And be it enacted, that when and as often as the resident magistrate shall see fit to grant any such licence as aforesaid to any person intending to keep a tap, canteen, or public house, or to authorise the sale of liquors in any inn, hotel, or boarding house, such resident magistrate shall deliver to the person who shall have applied for the same a certificate, in the form in the schedule to this ordinance in that behalf set forth; which certificate, when produced and delivered to the officer or person nominated as aforesaid, shall entitle the person named therein to receive the licence therein mentioned.

Magistrates to register Certificates.

13. And be it enacted, that every resident magistrate shall keep, or cause to be kept, a register of all certificates granted by him, which shall show the date when the application was received, the name of the applicant, and the description of the trade or calling intended to be carried on; and in regard to applications for retail licence to keep a tap, canteen, or public house, such register shall also show the date at which each notice was affixed, and each certificate granted or refused, as the case may be.

When liquors must and must not be consumed on the Premises.

14. And be it enacted, that no person who shall have applied for and received a retail licence for the purpose of an inn, hotel, or boarding house, shall sell any liquors not to be drunk or consumed on the premises, or shall keep on the premises a tap, canteen, or public house, under pain of forfeiting any sum not exceeding ten pounds: nor shall any person who shall have applied for and received a retail licence, to authorise the sale of liquors not to be drunk or consumed upon the premises, permit any liquors to be drunk or consumed on the premises, under the like penalty.

Recognizance forms.

15. And be it enacted, that as often as a retail licence shall have been granted to any person who shall have applied for the same for the purpose of keeping a tap, canteen, or public house, such person shall thereupon enter into a recognizance before the officer or person nominated asaforesaid, who is hereby authorised and empowered to take the same in the sum of £50 sterling, with two sufficient sureties in the sum of £25 sterling each, which recognizance, with the condition thereof, shall be in the form in that behalf prescribed in the schedule to this ordinance; and in case the person applying for such licence shall be hindered through sickness, infirmity, or other reasonable cause, to attend in person for the purpose of entering into such recognizance, it shall and may be law-

ful for the person aforesaid, empowered to grant such licences, to permit two sufficient sureties to enter into such recognizance, each surety in the penalty of £50 sterling for the performance of the conditions of the said recognizance; and which said recognizance shall be acknowledged in the presence of and signed by such officer or person taking the same; and the same, with the conditions thereof, shall be sent to the Resident Magistrate of the jurisdiction, to be by him duly entered and recorded; and that for every such licence granted without such recognizance, and for every such recognizance taken and not sent as aforesaid, the officer or person signing such licence shall incur and be liable to the payment of a fine not exceeding *fifty pounds* sterling.

Fraudulent Licences.

16. And be it enacted, that every licence which shall be found to have been fraudulently obtained, shall be null and void; and any person who shall forge or counterfeit any licence or certificate, or write any name on any such licence, to resemble, imitate, or represent the name of any resident magistrate or other person empowered to grant the same, or shall tender or produce any paper with such counterfeit name or writing therein, knowing such name or writing to be counterfeit, or shall take or receive any sum of money for signing or procuring counterfeit signatures to such licences or certificates, every person so offending, being lawfully convicted thereof, shall incur and be liable to a fine of £100 sterling, and shall also, upon prosecution and conviction, suffer such pains and penalties as by law are or may hereafter be imposed upon persons convicted of forgeries or frauds of this or the like nature.

Selling without Licence.

17. And be it enacted, that any person who shall sell any of the liquors aforesaid, by wholesale or retail, without having obtained a wholesale or retail licence, respectively, or who, having obtained such licence, shall sell any such liquors except upon the premises mentioned in his licence, shall incur and be liable to the pains and penalties imposed upon persons convicted of selling such liquors without a licence. Provided always, that any licensed keeper of an inn, hotel, boarding house, tap, canteen or public house, who shall be desirous to expose for sale and sell any of the liquors aforesaid, at any place of public amusement or resort, may apply to the resident magistrate of the division for permission in writing so to do, and such magistrate may, should he see cause, grant such permission, and thereupon such sale shall become and be duly authorised and legal.

Certain Persons may sell without Licence.

13. And be it enacted, that nothing in this Ordinance contained shall extend, or be construed to extend, to require a licence for the sale of any of the liquors aforesaid made by any sheriff or other officer acting under the authority of any court, judge, or magistrate.

Wholesale dealers may store in certain places otherwise than those Licensed.

19. And be it enacted, that nothing in this ordinance contained shall prevent, or be construed to prevent, any dealer in the liquors aforesaid, to whom a wholesale licence shall have been granted, to keep or store any of the liquors aforesaid in any number of stores or places, provided that no one of such stores or places be distant from any other of such stores or places more than two miles, and that the description of all such places be entered in the licence, otherwise such dealer shall incur and be liable to the pains and penalties imposed upon persons convicted of selling without a licence; provided, however, that persons in partnership, and carrying on business under one firm, and in one house or shop only, and proving such partnership, shall not be required to take out more than one licence for such house or shop.

Licensed places—names of dealers and notice of Licences, how to be affixed.

20. And be it enacted, that every person having obtained any wholesale or retail licence as aforesaid, shall, except as hereinafter excepted, cause to be affixed in some conspicuous place on the outside of and over the door of his house, shop, store, or stores, a board, on which, on the wall over the door or doors of the building, shall be painted in letters publicly visible and legible, at least two inches long, his name at full length, (or where they are partners, the name or style of the firm or partnership,) and after such name or style, the words *licensed dealer or dealers in wines, malt liquors, and spirituous liquors, by wholesale or retail*, (as the case may be) and shall keep up such board or sign in good condition, during the continuance of such licence; and (in default of affixing such board or sign, or keeping the same in manner as aforesaid, shall incur and be liable to the payment of a penalty not exceeding *five pounds* sterling; and in case the whole amount of the penalty imposed, and of the costs and expenses, be not paid within three days after conviction, to imprisonment not exceeding one month, and not less than one week, unless the penalty, costs, and expenses be sooner paid. But nothing in this ordinance contained shall be construed so as to require any board to be affixed in regard to any inn, hotel, or boarding house.

Penalty in case unlicensed Persons affix such notice.

21. And be it enacted, that every person who shall not have obtained any such licence as aforesaid, who shall affix any such board as aforesaid, before or on

his house, shop, or store, or who shall paint or give any notice, importing that he is a dealer in the liquors aforesaid, or any of them, shall for every such offence incur and be liable to the pains and penalties imposed on persons convicted of selling any of the liquors aforesaid without a licence.

Who may enter licensed premises, and for what purpose.

22. And be it enacted, that it shall and may be lawful for all resident magistrates and justices of the peace, in their respective jurisdictions, to enter houses where liquor is sold by retail, or on or before which is affixed, as by the 20th section of this ordinance required, any board, or other notice, importing that any of the liquors hereinmentioned are there sold by retail, and demand to see the licence; and if the same be not produced, and no good and sufficient reason be given for the non-production of the same, it shall and may be lawful for them to seize all liquors found therein, as are mentioned in this ordinance, and the vessels, containing the same, and apply such liquors and vessels as forfeited, to the use of the district treasury; and the occupier of such house shall be deemed an unlicensed retailer, and shall incur and be liable to the pains and penalties imposed by this ordinance on persons convicted of selling any of the aforesaid liquors without a licence. Provided always that the reasonable expenses of such seizure shall be paid out of the proceeds of the articles so seized.

Persons suspected of illicit dealing may be brought before Magistrate.

23. And be it enacted, that if any person shall make information on oath before a resident magistrate, and show probable cause, why he suspects that any person sells any such liquors as aforesaid by retail, without licence to that effect, it shall and may be lawful for such magistrate, within his jurisdiction, to summon such suspected person before him, and also to summon any other person, who such magistrate shall be satisfied is capable of giving material evidence upon the subject, to be examined and give evidence upon the charge against such suspected person; and if such persons so summoned as witnesses shall refuse to appear, or shall refuse to be examined on oath and give evidence as aforesaid, it shall and may be lawful for the said magistrate to commit every such offender to prison, for a period not exceeding one month, or until the party shall no longer refuse to be examined and give evidence as aforesaid.

Days and hours at which public houses may not be open, or sell.

24. And be it enacted, that no retail dealer shall sell, or keep any tap, canteen, or public house open for the sale of such liquors as aforesaid, or any of them, or shall suffer any of them to be drunk or consumed therein,

during any part of Sunday, or between the hours of nine o'clock at night and six o'clock in the morning of any other day; and any person contravening this section, shall, upon conviction, forfeit any sum not exceeding ten pounds, and upon non-payment thereof, shall be imprisoned for any period not exceeding one month.

Who may enter Inns, and when, and for what purposes.

25. And for the better preservation of the public peace and order, be it enacted and declared, that it shall and may be lawful for any resident magistrate or justice of the peace, within his jurisdiction to enter any inn within which any riot, disturbance, or breach of the peace shall take or have taken place, at any hour, and to disperse or otherwise to detain and commit to safe custody, any person actually engaged therein; and for any magistrate, justice of the peace, gaoler, constable, or peace officer, to enter any house for which a retail licence is granted, where such riot, disturbance, or breach of the peace shall take or have taken place, or any house which is known or found to be frequented by men or women of notoriously bad fame and character, for the purpose of removing, and to remove, all persons rioting, making disturbance, or drinking therein; and all persons being or remaining therein, (not being *bona fide* lodgers in such house,) between or within the hours hereinbefore declared to be unlawful; and if the holder of the licence for, or the keeper of, any such house, or the person in charge thereof at the time, shall not, on demand of entrance, admit such magistrate, or other person as aforesaid, or shall obstruct them, or any of them, in removing persons rioting, making disturbance, drinking, or unlawfully remaining therein between the hours aforesaid, the holder of such licence shall upon conviction forfeit any sum not exceeding ten pounds, and upon non-payment thereof shall be imprisoned for any period not exceeding one month.

Drunkenness and how punishable.

26. And for the better prevention and punishment of drunkenness, be it enacted, that whenever any magistrate or other person as aforesaid, shall find any person at any time drunk and lying down from the effect of intoxication in any street, road, or lane, or in any other public place within any town or village, any such person, if so apprehended during the night time, shall and may be lodged in any gaol, watch house, or house of correction, and shall be brought up in every case as soon as convenient and during the ensuing day at the latest, before the resident magistrate having jurisdiction in such place; and every person so apprehended shall, on due conviction thereof, incur and be liable to a fine not exceeding £1;

and in default of payment, it shall and may be lawful for the magistrate so convicting, to commit such offender to prison, with or without hard labor, and with or without spare diet, for a period not exceeding fourteen days, and in case of repeated offence, for a period not exceeding one month, unless the fine in any case be sooner paid.

Price of liquors sold in less than quart quantities, not recoverable.

27. And be it enacted, that no person shall be entitled to, or shall maintain any cause, action, or suit for, or recover at law, any sum of money, or demand, for or on account of, any spirituous liquors sold in any quantity less than one quart at any one time; nor for or on account of any particular item or article in any account or demand for spirituous liquors so sold, where the quantity shall be less than one quart; and in case any person shall take or receive any pawn or pledge from any person by way of security for the payment of any sum or sums of money owing by such person for spirituous liquors so sold, or shall take or receive in payment thereof any article whatsoever in lieu of money, every such person so offending and being convicted thereof, shall incur and be liable to the payment of a fine not exceeding ten pounds sterling, nor less than two pounds sterling, for every pawn or pledge so taken in or received by him or them; and the person or persons, to whom any such pawn or pledge shall belong, shall have the same remedy for recovering such pawn or pledge, or the value thereof, as if it had not been given as a pledge.

Penalty for taking pledges for such prices.

Price of liquor sold to unlicensed dealers not to be recoverable.

28. And be it enacted, that no person shall have any remedy for or recover any sum of money on account of any of the liquors in this ordinance mentioned, which shall be sold, contrary to law, to an unlicensed retailer; nor shall any such unlicensed retailer have any remedy for, or recover from any person, any sum of money on account of any of the aforesaid liquors sold by him; and all contracts, bills, promissory notes, bonds, and other writings given as a security for the payment of debts contracted for any of the liquors hereinmentioned, or sold to or by an unlicensed dealer, save and except negociable instruments in the hands of holders for valuable consideration, and without notice of the illegality, shall be and are hereby declared to be null and void.

How wine produced on any farm may be sold by producer.

29. And be it enacted, that it shall and may be lawful for the owner or occupier of any land or farm, to sell wine in any quantity not less than nineteen gallons, and brandy in any quantity not less than nine and a half gallons, such wine or brandy being the produce of such land or farm, or made from grapes otherwise procured or purchased by

him, and made, sold, and delivered on his premises; or to sell the same to any person in any public market, or to any licensed dealer in wines and spirituous liquors, without taking out any licence whatever; and any owner or occupier of land as aforesaid, who shall sell any such liquors in contravention of this ordinance, shall incur and be liable to the pains and penalties imposed on persons convicted of selling such liquors without a licence.

Brewer's licence.

30. And be it enacted, that it shall and may be lawful for any person to brew malt liquors for sale, and to sell the same in quantities not less than nine and one half gallons, on taking out a licence for that purpose of the value of thirty pounds.

Distiller's licence.

31. And be it enacted, that it shall not be lawful for any person to distil spirituous liquors from wines or fruits not being the produce or made from the produce of any land or farm belonging to or occupied by him, or from wines made from grapes purchased or procured by him as aforesaid, without his having previously taken out a licence for that purpose of the value of thirty pounds, which shall authorise him to sell spirits, distilled by him, in cask only and in quantities not less than nine and one half gallons.

Licence for distilling from Grain.

32. And be it enacted, that it shall and may be lawful for any person to distil spirituous liquors from grains, and to sell the same in quantities not less than nine and one half gallons, on taking out a licence for that purpose, of the value of thirty pounds.

Brewing or distilling without a licence.

33. And be it enacted, that any person who shall brew malt liquors for sale, or who shall distil spirituous liquors in contravention of this ordinance, without having taken out the respective licences for that purpose, shall incur and be liable to a penalty not exceeding £50 for each offence, and shall further, in case of selling malt liquors or spirituous liquors so brewed or distilled by him, incur and be liable to the pains and penalties imposed on persons convicted of selling such liquors without a licence.

Offences—jurisdiction.

34. And be it enacted, that all offences against this ordinance shall be cognizable before the resident magistrate, within whose jurisdiction they shall have been committed.

Onus of proving licence on the dealer.

35. And be it enacted, that in all proceedings against any person selling, or dealing in, or disposing of, any liquors without licence, contrary to the provisions of this ordinance, such person shall be deemed to be unlicensed, unless he shall, at the hearing of the case, produce his licence, or give other satisfactory proof of his being licensed.

Evidence necessary.

36. And be it enacted, that it shall and may be lawful for every such resident magistrate as aforesaid, in any proceedings against any person for retailing without licence, as hereafter mentioned, to determine upon the fact of retailing according to the circumstances of the case, and the reasonable inferences deducible therefrom, and such resident magistrate may find such fact to be proved without direct evidence of money or value having been given for the liquor alleged to have been sold or retailed.

Dealing without licence:—Penalties.

37 And be it enacted, that in every case in which any resident magistrate shall see cause to convict any person of the following offences, the person offending shall incur and be liable to the pains and penalties hereinunder respectively set forth, that is to say:—

Firrt offence.

For selling, dealing in, or disposing of wines, spirituous liquors, liqueurs, malt liquors, ginger beer or spruce beer without a licence, a penalty of £10, and in default of payment thereof being forthwith made or security given for the same, to imprisonment with or without hard labor, for any period not exceeding one month, unless the fine imposed shall be sooner paid or levied, in which case the offender shall be liberated.

Second offence.

For any such second offence as last aforesaid, a penalty of £20, and in default of payment, or security as aforesaid, being made or given upon conviction, to imprisonment, with or without hard labour, for any period not exceeding three months, or to imprisonment with or without hard labour, for any period until the fine imposed shall be paid or levied, such period, however not to exceed three months, nor to be less than any shorter period (if any) which the magistrate may in his discretion see fit to award.

Third offence.

For a third or any subsequent conviction of the offence last aforesaid, a penalty of £30, with or without a superadded imprisonment, as hereunder mentioned; that is to say, in case the fine imposed, with costs, shall be paid or secured forthwith, to imprisonment, with or without hard labor, for any period not exceeding six months, and in case the said fine shall not be paid or secured forthwith, to imprisonment, with or without hard labor, for any period not exceeding nine months, either absolutely, or until the said fine shall have been sooner paid or levied, as the magistrate convicting shall award; or such magistrate may award; such imprisonment as aforesaid, for any period not exceeding nine months, with a condition that it shall cease and deter-

mine after a certain minimum extent of such imprisonment has been suffered, in case the fine imposed shall then be paid or levied.

Penalties for contravening condition of recognizance.

For the offence of contravening any of the provisions or covenants contained in the condition of any subsisting recognizance (not being a provision in regard to which any other penalty or punishment shall be by this ordinance provided) and which provisions were by any licensed person stipulated and agreed to be fulfilled and kept, a penalty of £10, and in case the same shall not be paid or secured forthwith, to imprisonment, with or without hard labor, for any period not exceeding one month, or until the fine be sooner paid; and a third conviction within the space of three years shall, *ipso facto*, forfeit the subsisting licence of the offender, if such licence there be, and such offender shall thereupon be disqualified for holding any licence to sell liquors in future.

Penalties may be mitigated.

38. And be it enacted, that it shall be lawful for any such resident magistrate as aforesaid, to mitigate any of the penalties or sums of money last aforesaid, so as such mitigation shall not, in any case, reduce such penalty to less than one-third thereof, and that the causes of such mitigation shall be recorded, under the head of remarks, in the record book of such magistrate.

Distress and sale of Goods.

39. And be it enacted, that when and as often as any offender shall be convicted of any offence against any of the provisions of this ordinance, it shall and may be lawful for the magistrate, convicting such offender, to issue his warrant for levying the amount of any fine or penalty, imposed upon such offender, by distress and sale of the goods of such offender, whether such offender shall be in custody by reason of his conviction of such offence or not, and for levying also the cost of such distress and sale, and such warrant shall, in substance, be agreeable to the form in the schedule to this ordinance in that behalf set forth, and the overplus, if any, levied under any such warrant shall be rendered to the said offender, and all goods and chattels taken under and by virtue of any such warrant shall be sold under the like provisions and regulations as are or shall be provided by the rules of the courts of resident magistrate for the sale of goods and chattels taken under the process of execution by such courts.

Persons convicted may appeal.

40. And be it enacted, that any person who shall be convicted by the judgment of any resident magistrate, of any offence against any of the provisions of this ordinance,

may, should he so think fit, bring such conviction in appeal or review: Provided he shall, within three days next after the day of such conviction, give sufficient security to the satisfaction of the convicting magistrate, to double the amount of the pecuniary penalty imposed, that he will take proceedings for prosecuting such appeal or review, within one month; and also that he will stand to, and perform, the judgment of the court before which the appeal or review shall be brought, in case the conviction should be there affirmed, together with the costs of such appeal or review. And in case the person convicted shall have been already committed to prison, he shall, upon giving such security as aforesaid, be liberated from custody, pending the hearing and determination of such appeal or review.

Penalties to go to the informers.

41. And be it enacted, that the whole amount of every fine, penalty, and forfeiture, paid or levied upon conviction of any offence against the provisions of this ordinance, shall, upon recovery thereof, be paid to the person upon whose information the conviction shall have been had, unless such person shall decline to receive the same, and shall direct some charitable or other appropriation thereof, in which case it shall be applied accordingly. Provided always, that it shall not be obligatory upon any convicting magistrate, to issue his warrant for distress and sale of the goods of any offender, in manner and form as is in the 39th section of this ordinance mentioned, unless the person prosecuting such offender shall in the first instance pay in advance, or otherwise secure, the reasonable costs and charges of executing such warrant.

Ordinance when to commence.

42. And be it further enacted, that this ordinance shall commence and take effect from and after such date as shall be fixed, and appointed for the commencement thereof, by any Proclamation to be by the Lieutenant Governor of the district aforesaid for that purpose issued, and posted upon or affixed to any public place in Pietermaritzburg, Provided always, that any licences issued at any time during the present year 1847 shall cease and determine on or before the 31st day of December of the said year.

SCHEDULE.

Form of Wholesale Licence.

I, , distributor of stamps in (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , to sell, by *wholesale*, wines, spirituous liquors, and malt liquors, at

and not elsewhere, for from the and no longer (Signed) ———

Form of Retail Licence.

I, distributor of stamps in (or in the district of) on this day of , 18 , do hereby authorise and empower , residing at , (and who has produced to me the certificate required by law,) to sell, *by retail,* wines, spirituous liquors, malt liquors, ginger beer, and spruce beer, at and not elsewhere, for, from the day of 18 , and no longer,
(Signed) ———

The above form will apply to the case of a tap, canteen, or public house. When the certificate shall describe the licence applied for as intended to authorise the sale of liquors not to be drunk or consumed on the premises, the words, "This licence not to authorise the sale of any of the liquors aforesaid to be drunk or consumed on the premises," shall be added.

When the certificate shall describe the licence as intended to authorise the keeping of an inn, hotel, or boarding house, the words "This licence to authorise the keeping of an inn, hotel, or boarding house, but not a tap, canteen, or public house," shall be added.

Form of Licence to brew and sell Malt Liquors by wholesale.

I, distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorize and empower , residing at , to brew malt liquors at only, and to sell the same, *by wholesale,* and in quantities not less than 9½ gallons, for *one whole year,* from the 1st day of January 18 , and no longer.
(Signed) ———

Form of Licence to Distil Spirituous Liquors from Wine or Fruits, or from Grain.

I, distributor of stamps, in , (or in the district of) on this day of , 18 , do hereby authorize and empower , residing at , to distil spirituous liquors from (wine or fruits, or from grain,) at only, and to sell the same, *by wholesale,* in cask only, and in quantities not less than 9½ gallons, for *one whole year,* from the 1st day of January 18 , and no longer.
(Signed) ———

Form of Certificate to be granted by the Resident Magistrate.

I, A. B., resident magistrate for , do hereby certify that C. D. is entitled to receive a licence for selling wines,

spiritnous liquors, liqueurs, malt liquors, ginger beer, and sprnce beer, by retail, at . in street, Cape Town, (or at in the district of , as the case may be.) And I further certify that the said C. D. has applied for such licence in order to keep a tap, canteen, or public house, (or in order to sell the liquors aforesaid, not to to be drunk or consumed on the premises," or "in order to keep an inn, hotel, or boarding house," (as the case may be.)

Dated this day, of

(Signed) A. B., Resident Magistrate for

Form of Recognizance.

Before me, , distributor of stamps for , on the day of 18 , A. B. residing at , acknowledges himself to be indebted to our Sovereign Lady the Queen, in the sum of £50, and C. D. and E. F. severally acknowledged themselves to be indebted to our Sovereign Lady the Queen, in the sum of £25, to be levied on their goods and lands, upon condition, that the said A. B. shall not fraudulently dilute or adulterate any liquor sold by him; and shall not use, in the selling thereof, any measures that are not of full size; and shall not get drunk, nor knowingly permit drunkenness or tippling on his premises, and shall not permit gambling; nor shall knowinglypermit men or women of notoriously bad fame to assemble on his premises; nor shall keep open his premises nor permit any drinking therein (except for the accommodation of inmates,) between the hours of nine at night and six in the morning, on any day; nor shall sell any liquors on any part of Sunday; but shall keep good rule and order therein, by night and by day; then this recognizance to be void, or else to remain in full force.

Form of Warrant for Distress and Sale.

To , messenger of the court of resident magistrate of , (or in case the warrant be issued by a justice of the peace, "To , (the person to whom the warrant is directed.)

Whereas , (name of the offender) of , was on this day (or on the day of 184 ,) convicted before me of contravening the Ordinance No. 29, 1846, and was duly adjudged to forfeit as a penalty, the sum of £ , this is therefore to authorise and require you that of the goods and chattels of the said , you cause to be levied and raised the said sum of £ , with the costs of such conviction, amounting to the further sum of £ , together with your charges about the same, and return to the clerk of this court, what you have done by virtue hereof, for which this shall be your warrant.

Given under my hand at , this day of 184 ,

(Signed) ———, resident magistrate, or

———, justice of the peace, (as the case may be.)

No. 10.—1847.] ORDINANCE [March 30, 1847.

For laying certain duties upon Licences, and in lieu of Stamps, within the District of Natal.

Preamble

WHEREAS it is expedient to make provision for laying, within the district of Natal, certain duties upon Licences and in lieu of Stamps: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Lieutenant Governor of the said district for the time being, with the advice of the Executive Council thereof, by any proclamation to be by him, from time to time, issued for that purpose, and posted upon or affixed to some public place in Pietermaritzburg, to order, direct, and require that all persons exercising the certain trades, occupations, or callings, or possessing or performing any particular matter or thing specified in such proclamation, shall take out, from the person or persons to be in that behalf nominated and appointed in such proclamation, a licence for so doing, and to fix and determine the amount which shall be payable for or upon the obtaining of each and every such licence, which amount shall be paid into the Treasury of the said district: Provided always that no licences shall be required by any such Proclamation for any sort or species of trade, occupation, or calling, or the possession or performance of any description of matter or thing in regard to which a licence shall not be necessary by virtue of some law in force in those parts of this colony other than the district of Natal; nor shall any licence be required by any such proclamation for any matter or thing in regard to which a licence shall be required by any ordinance in force within the said district; nor shall the amount required to be paid by any such proclamation for any licence exceed the amount which would be payable for the same sort or description of licence in those parts of this colony other than the district aforesaid.

Lieut.-Governor may by Proclamation impose licence under certain conditions and restrictions.

2. And be it enacted, that if any person who should, in obedience to, or in conformity with, any such proclamation as aforesaid, take out any certain licence, shall be proved to have exercised, without having previously taken out the particular licence in that behalf required, the trade, occupation, or calling, for the exercise of which such licence was necessary, or to have possessed or performed any matter or thing for the possession or performance of which a licence was required, such person shall, for every such offence, forfeit any sum not exceeding five times the amount of the charge or duty payable for, or in respect of, the taking out of the peculiar licence which

such person should have taken out and possessed; and in default of payment thereof shall be liable to imprisonment, with or without hard labour, for any time not exceeding one month.

Lieut.-Governor may establish duties in lieu of Stamps under certain conditions and restrictions.

3. And be it enacted, that it shall and may be lawful for the Lieutenant Governor aforesaid, with the advice of the Executive Council aforesaid, in and by any such proclamation as aforesaid, to fix and establish a tariff of duties to be payable in lieu of stamp duties upon or in regard to deeds or other instruments passed before or registered by the registrar of deeds of the said district; and upon or in regard to wills or other instruments of a testamentary description, executed within the said district; and upon or in regard to the accounts of executors, guardians, or other administrators, lodged with a public department; and upon or in regard to writs, documents, or papers issued by or filed or exhibited in the several courts of justice within the said district; and upon or in regard to all grants of land in the said district in freehold or on quitrent; and upon or in regard to the receipts for quitrents payable in regard to lands granted or to be granted in the said district; provided always that no duty in lieu of stamp duty shall be payable within the said district, upon or in regard to any instrument, document or paper, which would not be chargeable with stamp duty in those parts of this colony, other than the said district; and provided also that no higher duty shall be chargeable within the said district, in regard to any instrument, document, or paper, than would be chargeable upon the same, under the same or similar circumstances, in those parts of this colony other than the said district.

Offences where to be cognizable.

4. And be it enacted, that all offences against any of the provisions of this ordinance may be prosecuted in the district court of Natal, or in the court of the resident magistrate of the division in which the same shall have been committed, and all fines and forfeitures shall be paid into the district treasury; provided always that the Lieutenant Governor aforesaid shall and may, in regard to any such fine or forfeiture, determine what portion thereof, if any, not exceeding one half, shall be paid to any person upon whose information the conviction shall have taken place.

Ordinance when to commence.

5. And be it enacted, that this ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any proclamation to be by the Lieutenant Governor aforesaid for that purpose issued and posted or affixed in manner and form as hereinbefore provided in regard to

the proclamation in the first section of this ordinance mentioned.

No. 11,—1847.] ORDINANCE March 30, 1847.

For amending the Ordinance No. 14, of 1845, entituled Ordinance for erecting a District Court in and for the District of Natal.

Preamble.

WHEREAS by the 15th section of Ordinance No. 14, of 1845, entituled "Ordinance for erecting a District Court, in and for the District of Natal," it is enacted as follows, that is to say, "Provided always, that every person who shall be appointed to be, or act as, crown prosecutor for the said District of Natal shall, while he shall hold such appointment, be admitted to act as an advocate in the said court in all cases in which he shall prosecute or appear for Her Majesty the Queen, and shall, in all other cases, be admitted to act as attorney in the said court;" And whereas it is expedient that other provisions should be made in regard to the rank and procedence in court of such crown prosecutor as aforesaid: Be it therefore enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that so much of the said 15th section of the Ordinance aforesaid as is hereinbefore recited and set forth, shall be repealed, and the same is hereby repeated accordingly.

Part of section 15 of Ordinance 14, of 1845 repealed.

2. And be it enacted, that every person who shall be appointed to be or act as crown prosecutor for the District of Natal shall, while he shall hold such appointment, be admitted to act as an advocate in the district court of Natal, in all cases whatsoever in which he shall retained or employed, and entitled to take precedence and claim pre-audience, in the said court, above or before all persons now, or hereafter, practising therein as advocates or attorneys, in like manner, and to the same extent, as Her Majesty's attorney-general, when admitted as an advocate of the supreme court of the Colony of the Cape of Good Hope, is by law or usage allowed precedence and pre-audience in the said last mentioned court, above or before all other persons practising therein. Provided always, that nothing herein contained shall be construed so as to prevent the crown prosecutor for the time being, from acting as an attorney as well as an advocate in all suits and proceedings in which he shall act or appear for Her Majesty the Queen.

Crown prosecutor to act as advocate.

Precedence and pre-audience.

May act for the Queen both as advocate and attorney.

3. And be it enacted, that this Ordinance shall com-

Ordinance when to commence.

mence and take effect from and after such date as shall be fixed and appointed for the commencement thereof, by any Proclamation to be by the lieutenant-governor of the said district for that purpose issued and posted upon, or affixed to, some public place in Pietermaritzberg.

No. 12,—1847.] ORDINANCE [March 30, 184

For the establishment and Regulation of a Post Office and Postage within the District of Natal.

Ordinance No. 1, 1846 with certain modifications, extended to Natal.

WHEREAS it is expedient to establish and regulate a Post Office, and to provide for the payment of Postage within the district of Natal; and for that purpose to extend to the said district the provisions of the Ordinance No. 1, 1846, entituled: "Ordinance for the regulation of the Post Office, and Postage," or such of the said provisions as are applicable to the said district: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that all and singular the several provisions of the Ordinance aforesaid, save and except the 1st, 9th, and 43rd sections thereof, and the concluding clause or provision of the 10th section, relative to the 9th section of Ordinance No. 4, 1844, entituled: "Ordinance relating to Merchant Vessels arriving in the Ports of this Colony," and the concluding clause or provision of the 25th section, relative to the conveyance of the *Government Gazette*, sha'l (subject however to the certain modifications and adaptions hereinafter provided) extend and apply to the district of Natal, and that as fully as if the several provisions of the said Ordinance No. 1, 1846, (except as herein before excepted) were herein again set forth, and word for word repeated.

Explanation clause.

2. And be it enacted, that when and as often as the words "this Colony" occur, in any part of the said Ordinance No. 1, 1846, the same shall be taken to mean, for the purpose of this Ordinance, but not otherwise, the district of Natal; and the word "Governor," to mean the "Lieutenant Governor" of the said district; and the word "Postmaster General," to mean such person as shall, by the said Lieutenant Governor, be appointed to be or act as Postmaster General of the said District; and the words "Colonial Treasury" in the 39th Section of the said Ordinance, to mean the Treasury of the said district.

Proclamation of Lieut. Governor how to be promulgated.

3. And be it enacted, that when in the 8th and 29th sections of the said Ordinance No. 1, 1846, a Proclamation in the *Government Gazette* is mentioned; and when

in the 23rd section of the said Ordinance, a Proclamation is mentioned, without any direction as to the manner of the publication thereof; the said Proclamations shall respectively, for the purpose of this Ordinance, but not otherwise, be taken to mean such Proclamations as shall respectively be issued by the Lieutenant Governor of Natal for the time being, and posted upon or affixed to some public place in Pietermaritzburg.

Ordinance when to commence.

4. And be it enacted, that this Ordinance shall commence and take effect from and after such date as shall be fixed and appointed for the commencement thereof by any Proclamation to be by the Lieutenant-Governor aforesaid for that purpose issued, and posted or affixed in manner and form as in the last preceding section provided in regard to the respective Proclamations therein referred to.

No. 13,—1847.] ORDINANCE [April 16, 1847.

For empowering the "Commissioner for Claims" to take Evidence relative thereto.

Preamble.

Whereas the Right Honorable the Governor and Commissioner, Sir Henry Pottinger, Baronet, G.C.B., was pleased, by a certain Instrument issued by his command, bearing date at Graham's Town, the 11th day of March, 1847,—to appoint Richard Burgass, Esquire, M.A., of the Middle Temple, Barrister at Law,—to perform, under the title of "Commissioner for Claims," certain duties in the said instrument set forth, touching and concerning Claims for Compensation, or Remuneration, arising out of, or connected with, the existing war with certain of the Kafir Tribes, adjacent to the Eastern Frontier of this Colony:—And whereas it is necessary in order to the due performance of his said duties by the said Commissioner, that he should be empowered, as often as he should see occasion, to summon witnesses, and take evidence upon the subject of such Claims: Be it therefore enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Commissioner shall be and he is hereby empowered, by summons under his hand, to require the attendance of all such persons as shall appear to him to possess useful information, and whom he may think fit to examine regarding any matter brought before him in his said capacity, and also to require such witnesses to bring with them and produce such papers or

Commissioner may summon and swear witnesses.

documents as shall be in their possession, custody, or power, and may be deemed necessary,—and to administer oaths to all such witnesses, so summoned, and to all other persons who shall come or be before the said Commissioner, and whom he shall see fit to examine.

Summonses, how to be served.

2. And be it enacted that every such summons as aforesaid shall be directed to the same officer, and served in the same manner, as if the same were process for procuring the attendance of a witness to give evidence in any criminal case before a Circuit Court, to be held for the district in which the place at which the witness in question shall be required to attend shall be situated.

Witnesses to be paid expenses, and how.

3. And be it enacted that every witness attending before the said Commissioner, in pursuance of any such summons as aforesaid, shall (except as hereafter is excepted) be allowed and paid his expenses at the same rate precisely as if he had attended in pursuance of the process of any such court, as in the last preceding Section mentioned, issued at the instance of the Public Prosecutor,—a bill of which expenses shall be made out by the Clerk of the Peace of the district in which the witness shall have attended before the said Commissioner,—upon production to such Clerk of the Peace of a certificate under the hand of the said Commissioner, certifying that the said witness had attended before him in pursuance of his summons, and upon proof given of the time and distance proper to be charged for; and whenever any such Bill, accompanied by the certificate of the Clerk of the Peace, that the distance and time charged therein are correct, shall be produced to the Civil Commissioner of the Division, such Civil Commissioner shall forthwith pay the amount of such expenses, for which payment such bill, when duly receipted, shall be his sufficient Voucher:—Provided always that it shall and may be lawful for the said Commissioner for Claims to disallow the expenses of any witness who shall prevaricate or otherwise misconduct himself in the course of his examination.

Penalties for non-attendance, and refusal to be sworn or to answer.

4. And be it enacted that if any person duly summoned to appear and give evidence before the said Commissioner shall, without having had any lawful cause or impediment, fail to appear, it shall be lawful for such Commissioner, by warrant under his hand, to authorise and direct any officer of the law, proper for the execution of Criminal Warrants, to apprehend the person so summoned, and failing to appear, and to bring such person before the said Commissioner at such time and place as shall be specified in such warrant, there to be examined. And if any person so summoned, or brought, before the said Commis-

sioner, shall, without lawful cause, refuse to be sworn, or shall refuse to answer any lawful question put to him by such Commissioner, or shall not, being thereunto required, and having no objection thereto, stated to and allowed by the said Commissioner, produce any papers or writings in his possession, custody, or power, relating to the subject matter of any claim for compensation, in the investigation of which the said Commissioner shall then be engaged, it shall be lawful for the said Commissioner, by warrant under his hand, to commit such person to such prison as he shall think fit, there to remain without bail, until he shall submit to be sworn, or make answer to all such lawful questions as shall be put to him by such Commissioner, or produce such papers or writings, as aforesaid, to the production of which no such objection as aforesaid shall be allowed. Provided, that no person shall be imprisoned under this section for any period not exceeding three months.

Penalty for Perjury.

5. And be it enacted, that if any person sworn by or before such Commissioner as aforesaid shall wilfully make any false answer to any lawful question which shall be put to him by the said Commissioner, such person shall be deemed guilty of the crime of Perjury,—and on conviction thereof shall suffer punishment by the law provided for the said crime. Provided, that any Quaker or other person by law entitled to give evidence in any court of justice in this colony upon his solemn affirmation shall, for the purpose of this section, be taken, when so affirming, to be sworn.

Ordinance when to commence.

6. And be it enacted that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

No. 14,—1847.] ORDINANCE [June 25, 1847.

For enabling the Governor of the Colony to create Courts of Resident Magistrates.

Preamble.

WHEREAS, owing to the great distance of many parts and portions of this colony from any court of resident magistrate, much evil and inconvenience are entailed upon the inhabitants, and it is therefore expedient to make provision for increasing to such extent as circumstances shall permit, the number of such courts: And whereas such provision may most fitly and desirably be made by enabling the Governor of this colony, by his proclamation, to create, from time to time, so many of such courts, as

means shall be provided for maintaining; And whereas by the 48th section of the royal letters patent of His late Majesty King William the Fourth, bearing date the 4th of May, in the second year of his reign, and commonly called the *Charter of Justice*, His said Majesty did authorise and empower the governor of this colony for the time being, with the advice of the legislative council of government thereof, by any laws and ordinances to be from time to time made for that purpose, to erect, constitute, and establish, under certain limitations and conditions, Courts of Request, and other courts having jurisdiction in civil and criminal cases: Be it enacted by the governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that so much, if any, of the said Charter of Justice as might be deemed or taken to prevent by implication, courts of resident magistrates from being erected, constituted, and established by any such proclamation as is hereinafter mentioned and authorised, shall be repealed, and the same is hereby repealed accordingly.

Charter of Justice,—repugnant clauses, if any, repealed.

Courts of Resident Magistrates may be established by Proclamation.

2. And be it enacted, that it shall and may be lawful for the governor of this colony, or the officer for the time being lawfully exercising the government thereof, by any proclamation to be by him from time to time issued for that purpose, and published in the *Government Gazette*, to erect, constitute, and establish courts, to be called "Courts of Resident Magistrates," and to be held for and within such districts respectively as the said governor shall in any such proclamation from time to time specify, define, or describe. And such courts shall be courts of record, and shall be respectively holden by and before such persons as shall be appointed to be the resident magistrates respectively of the districts so specified, defined, or described, at such place or places within their respective districts, as the said governor shall, from time to time, by any such proclamation, fix upon and announce. And the said districts shall become and be within, and subject to, the jurisdiction and authority of the courts of the resident magistrates for such districts respectively, and shall cease to be within and subject to the jurisdiction of the courts of resident magistrates to which they or any of them, or any part of any of them, previously belonged, anything contained in the ordinance No. 89, to the contrary notwithstanding.

To be Courts of Record.

Jurisdiction.

New Magistracies to be regulated by same law as the old.

3. And be it enacted, that every person who shall hereafter be appointed to be the resident magistrate for any district to be created by any such proclamation as aforesaid, shall be appointed in such manner, and every

court created, constituted and established as aforesaid, shall have jurisdiction, and shall be holden and may be abolished, and the proceedings shall be carried on therein, in such manner as is or shall be provided by any law or laws, now or hereafter to be in force relative to the courts, jurisdiction, powers, and duties of the resident magistrates within the country districts of this colony.

Ordinance not to extend to Natal.

4. And be it enacted, that nothing in this ordinance contained shall extend to the District of Natal.

Ordinance when to take effect.

5. And be it enacted, that this ordinance shall commence from and after the promulgation thereof.

No. 15,—1847.] ORDINANCE [July 20, 1847.

For reviving the Provisions of the Ordinance No. 15, of 1844, entituled "Ordinance to provide for the enregisterment in the Land Registers of the Colony of certain Subdivisions of the Locations and Extensions of the Settlers of 1820."

Preamble.

WHEREAS it is enacted, by the Ordinance No. 15, of 1844, entituled "Ordinance to provide for the enregisterment in the Land Registers of the colony of certain subdivisions of the locations and extensions of the Settlers of 1820," that no such Proclamation as is in the second section of the said Ordinance mentioned should be issued after the 31st day of December 1846: And whereas it is expedient to provide a further time during which such Proclamations may lawfully be issued: Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that it shall and may be lawful for the Governor of this Colony, at any time before the 31st of December, 1850, to issue any such Proclamation as is in the said second section of the said Ordinance No. 15, of 1844, mentioned and described, and thereupon every such Proclamation so issued shall be deemed and taken to be as valid and effectual, and all and singular the provisions of the said Ordinance shall, in reference thereto, be of like force and effect, as if the said 31st of December, 1850, had been inserted in the 14th section of the said Ordinance, in place and stead of the 31st of December 1846.

Settlers of 1820—Proclamations under Ordinance No. 15, of 1844, to have effect till Dec. 31, 1850.

Ordinance when to take effect.

And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Preamble

No. 16.—1847.] ORDINANCE. [July 24, 1847.

For the better Regulation of Pounds, and Prevention of Trespasses.

WHEREAS the existing Pound Regulations of this Colony are in many respects defective, and by reason thereof much injury and inconvenience are sustained by the inhabitants of the country districts: And whereas it is expedient to provide for the better regulation of all Public Pounds, not being within, or belonging to, any Municipality, and to define the duties appertaining to the situation of Pound master, and also to impose penalties upon the owners of animals found trespassing, and to regulate certain other matters of a like nature: And whereas the state and condition of the several parts or portions of this colony are such, that the same Regulations in all respects, regarding Pounds and Trespasses, could not without inconvenience be unalterably enacted for the colony at large, and it will therefore be expedient, while providing regulations for or in respect of the several matters aforesaid, to provide, at the same time, a means or mode by which certain of them may be accommodated and rendered suitable to the peculiar circumstances of particular divisions:—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the legislative council thereof, that the Government Minute of the 17th of June, 1825, commonly called the Pound Regulations, and the Proclamation of the Governor of this Colony, Lord Charles Henry Somerset, of the 23rd of May 1823, and all other laws or usages, so far as the same may be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same are hereby repealed accordingly.

Previous Pound Regulations repealed.

Pounds to be erected and Poundmasters appointed in each Division.

2. And be it enacted, that it shall be the duty of the Civil Commissioner of every Division to establish one or more Pound or Pounds in each Field-cornetcy of his division, and to appoint, subject to the approbation of His Excellency the Governor, some fit and proper person to be the Poundmaster or keeper of every such pound. And it shall be competent for such Civil Commissioner to dismiss any such Poundmaster for misconduct, or for what such Civil Commissioner shall consider such; but every such dismissal, together with the grounds and reasons thereof, shall be forthwith reported to His Excellency the Governor. Provided, however, that no Field-cornet, or assistant Field-cornet, not being already a Poundmaster at the time of the taking effect of this Ordinance, shall, except as hereinafter excepted, be eligi-

Persons disqualified to be Poundmasters.

ble to be appointed or continued as a Poundmaster; and provided that no Person shall be appointed or continued as Poundmaster who shall not possess sufficient Pasturage for the number of animals likely to be at any time impounded, nor shall any licensed dealer in Wines or Spirits be so appointed or continued. Provided, nevertheless, that it shall and may be lawful for the Civil Commissioner of any Division, with the previous consent of the Governor of this Colony, to appoint any Field-cornet or Assistant Field-cornet to be a Poundmaster in any place where sufficient grounds for dispensing with the prohibition aforesaid shall be found to exist.

Poundmaster to receive cattle to be impounded.

3. And be it enacted, that it shall be the duty of the Poundmaster of every Pound to receive into his charge or custody, all horses, horned cattle, sheep, goats, and pigs, which shall be tendered at such Pound, by any person being himself the owner or occupier of any fixed property, or any person authorised thereto, in writing, by any such owner or occupier, between sunrise and sunset, in order to be impounded as having been found trespassing upon such property; and any Pound master who shall not by himself, or some one acting on his behalf, receive into his charge or custody, all such animals as aforesaid, so tendered as aforesaid, shall for every such neglect or refusal incur a fine not exceeding £5; and such Poundmaster shall, moreover, be liable to satisfy and make good whatever amount of damage the owner of such animals, so refused or neglected to be impounded, or any other person, shall or may sustain, by reason of such refusal or neglect.

Poundmaster to give a receipt for cattle impounded.

4. And be it enacted, that every Poundmaster or person acting on his behalf shall give to every person delivering any animals into his charge a receipt or certificate in writing, signed by such Poundmaster or other person, setting forth the number and description of the animals so delivered, and specifying the species of trespass as reported by the person impounding the same, for or on account of which the same shall have been seized and impounded; and such Poundmaster shall enter the contents of every such certificate in his Pound Book, hereinafter mentioned.

Rate of mileage to be paid to person delivering animals to be impounded.

5. And be it enacted, that every person who shall bring to the Pound and deliver to the Poundmaster any animals to be impounded, and who shall produce a note or memorandum in writing from the owner or occupier of the property trespassed upon, or his known agent or caretaker, (which note or memorandum the Poundmaster shall preserve as a voucher,) stating in substance, that the bearer has been directed or authorized to convey the said

animals to such Pound, shall be entitled to receive from the Poundmaster of such Pound, at the time of the delivery over to him of such animals, *mileage* at and after the rate of four pence for each mile not exceeding ten of the distance which such animals shall have been brought, and four pence for each mile not exceeding ten which such person shall be obliged to return from such pound, to the place from which such animals shall have been brought, or to his residence (whichever shall be the nearest to such pound), and in case such animals shall have been brought a greater distance than ten miles, then such person shall receive for every mile above ten, as well in coming to as returning from such pound, at and after the rate of three pence.—Provided, always, that such mileage shall not be paid to more persons than one, but when and as often as the number or nature of the animals brought to be impounded shall be such as to require the care and attendance of more persons than one, the owner of the said animals shall be liable and bound to pay to the person impounding the same, *mileage* at and after the rate aforesaid, for and in respect of every person more than one necessarily and properly employed in conveying such animals to the pound, and such additional amount shall be recoverable by action in any competent court.

Fees of Poundmaster for receiving animals to be impounded.

6. And be it enacted, that the Poundmaster shall be entitled to demand or retain (as the case may be) a fee of one shilling for every horse, and of six pence for every other animal (not being a sheep or a goat) delivered to and received by him to be impounded, and a fee of one half-penny for every sheep or goat so delivered and received.

Fees of Poundmaster for herding and grazing.

7. And be it enacted, that the Poundmaster shall be entitled, over and above the fee in the last preceding section mentioned, to demand or retain (as the case may be) a further fee of four pence and one half-penny per diem for every day during which any such animal as aforesaid (not being a sheep or a goat) shall be herded, grazed, and fed by such Poundmaster; and a fee of one half-penny per diem for every sheep or goat so herded, grazed, and fed. Provided always that every stallion horse, or stallion ass, above the age of two years, every bull above the age of one year, every ram, he-goat, or boar above the age of nine months, and every animal, male or female, which from contagious disease, dangerous vice, or other reason shall be unfit to run with the remaining herd, shall be kept and fed separately and safely; and for every such stallion horse or ass shall be charged by such Poundmaster one shilling and six pence per diem, for

every such bull one shilling per diem, for every boar nine pence per diem, for every ram, he-goat, or other separated animal as aforesaid three pence per diem.

District Meetings as in the 37th Section mentioned, may alter fees and mileage.

8. And be it enacted, that the rate of mileage hereinbefore in the 5th section mentioned, and the amount of the fees payable on delivery of receipt as in the 6th section, and the amount of the fees payable for herding, grazing, and feeding, as in the 7th section mentioned,—shall be capable of being altered and adapted by each and every of the district meetings hereinafter as in the 37th section mentioned. Provided always, that no such district meeting shall be competent to impose or establish any rate of *mileage* greater than six pence or less than two pence, for each mile going to the Pound and for each mile returning therefrom, or any fees payable as aforesaid, on delivery and receipt, greater than the fees in that behalf in the 6th section mentioned, or less than one-half of the said fees respectively; or any fees to be payable, as aforesaid, for herding, grazing, and feeding, greater than six pence, or less than four pence per diem, for or in respect of every animal impounded, (not being a sheep or goat) or greater than one half-penny, or less than one farthing per diem, for every sheep or goat. Provided also, that none of the fees or rates in the 6th and 7th sections respectively mentioned, shall be reduced by any such meeting as aforesaid, unless with the concurrence of Civil Commissioner presiding thereat.

Restriction as to the powers of District Meetings

Mileage and fees to be paid to Poundmaster, who shall keep his kraals in repair.

9. And be it enacted, that the *mileage* hereinbefore in the 5th section mentioned, and the certain fees aforesaid to be taken and recovered by the Poundmaster of each pound, whether those specified as aforesaid or those substituted for the same by any such district meeting as hereinbefore and hereinafter mentioned, shall be paid to the said Poundmaster by the owner of the animal impounded, and shall be a charge upon such animals, which may be detained for the security thereof; and such fees as aforesaid shall be taken and received by every Pound Master for his own use; and in consideration thereof, he shall be bound to put and keep his certain kraals, and inclosures, by the next section required, in good and sufficient repair, and to keep a sufficient number of competent herdsmen, and, generally, to sustain all charges belonging to or connected with the animals impounded until they shall, as hereinafter provided, be released or sold. Provided always, that every Poundmaster shall deliver to the owner of any animals impounded, who may not be in a condition to pay the charges due upon the same, so many thereof as may be so delivered without thereby incurring any fair

Poundmaster not to

detain for fees an unnecessary number of animals.

or reasonable risk that the animal or animals retained might prove insufficient to cover or satisfy the charges due upon the animals so delivered, and those due or to become due, upon the animals retained; and any Poundmaster who shall retain, after demand, any greater number of such animals than reasonably and fairly were necessary amply to secure or satisfy such charges as aforesaid, shall be liable to make good to the owner thereof whatever damage he may sustain by such wrongful retention. And provided, also, that if in any case any animal shall be illegally placed in the Pound, the person so placing it there shall be liable to the owner to repay or make good all damages, costs, and charges arising out of such proceeding, together with an additional sum of two shillings for or in respect of every horse or head of cattle so illegally impounded.

Liability of person wrongfully impounding animals.

Poundmaster to keep at least three separate kraals, and take good care of the animals impounded.

10. And be it enacted, that it shall be the duty of every Poundmaster, and he is hereby required, to keep and maintain not less than three separate and distinct kraals or inclosures for horses, for horned cattle, for sheep and goats and pigs; but it shall be lawful for the Civil Commissioner of every division, in regard to any particular Pound therein, with respect to which a strict compliance with the provisions of this section shall be either wholly impossible or highly inconvenient, to authorise a deviation therefrom to such an extent as he shall find to be requisite and necessary. And every Poundmaster shall take or cause to be taken due and proper care of all animals impounded; and turn them or cause them to be turned out to graze not later than one hour at farthest after sunrise in the morning, and shall be responsible to the owners thereof for all injury and damage which they may sustain by reason of any sort or degree of neglect or default on the part of such Poundmaster or his servants, or others acting on his behalf. And any Poundmaster who shall ride or drive, or otherwise work or use, any animal impounded, shall, for every such offence, forfeit a sum not exceeding £5. And when and as often as any animal shall die or be injured from intrinsic causes or unavoidable accident, and without any such default as aforesaid, the Poundmaster shall enter or cause to be entered in his pound book, hereinafter mentioned, a true description of the animal dead or injured, and of the cause or casualty (so far as ascertainable) which shall have occasioned its death or injury, as the case may be; and in case any death or injury shall have taken place in regard to which no such entry as aforesaid shall be made, or if any entry shall be made wilfully untrue in any respect,

Death of animals to be entered in a Book.

such death or injury shall be deemed and taken to have been occasioned by the default of such Poundmaster, who shall be responsible accordingly.

Provision regarding animals affected with contagious disease.

11. And be it enacted, that it shall and may be lawful for every Poundmaster to destroy or cause to be destroyed all impounded animals affected with any contagious disorder, or such as may, from any cause, be found so furious and ungovernable as to endanger the lives of human beings or to be obviously destructive to other animals impounded. Provided that no animal, however diseased or dangerous, shall be destroyed until the Justice of the Peace nearest to the Pound in which such animal shall be confined,—or in case he shall be absent from his residence, or shall reside at a greater distance than 12 miles, the nearest Field Cornet,—or in case he shall be absent from his residence, or shall reside at a greater distance than 6 miles, two disinterested Land-owners (not living or jointly occupying with the Pound master requiring their attendance) shall have examined the animal proposed to be destroyed, and shall agree with the Poundmaster regarding the necessity of such destruction; and every Justice of the Peace, Field-Cornet, or Landowner attending for the purpose of any such inspection, shall be paid by such Poundmaster horse-hire at and after double the usual tariff rate, which shall be recoverable from the owner of the animal, should the same be destroyed; but should the same not be destroyed, or should such animal be destroyed, and the owner theref be unknown, then the amount of such horse hire shall be paid to such Poundmaster by the colonial treasury. And provided, that the owner of every such animal, when known to such Poundmaster, shall be summoned in writting by such Poundmaster to attend such examination as aforesaid, (and for serving such summons the Poundmaster may recover from such owner horse-hire at the nsual tariff-rate,) and in case such owner shall attend such inspection and object to the destruction of the said animal, such owner shall be entitled to release such animal from the Pound, in case he shall release the same forthwith, and shall at the same time release also all other animals belonging to him (if any) impounded at the same time with the animal proposed to be destroyed. Provided also, that no sheep affected merely with the disease commonly called brandziekte, or goat with the disease called the scurvy, shall be destroyed unless with the owner's consent; nor shall any such examination as aforesaid be had recourse to in regard to such sheep or goats.

Poundmaster not to

12. And be it enacted, that no Pound master shall

impound in his own Pound animals trespassing on his own property.

(except as hereinafter excepted) be permitted to confine in the Pound under his care any animals found trespassing upon any property belonging to such Poundmaster, either individually or in common with any other person; but all such animals shall be sent to the nearest Pound kept by any other Poundmaster; but every Poundmaster, sending any animals to such other Pound, shall be bound to make, for the information of persons seeking strayed or missing animals, a memorandum in his pound book, setting forth the number and description of the animals so sent. And if any Poundmaster shall confine any animal, or omit to make a memorandum, contrary to the provisions of this section, he shall, for every such offence, forfeit any sum not exceeding Ten Pounds, and not less than Two Pounds. Provided always that nothing in this Section shall extend to any Poundmaster from whom the nearest Pound other than that kept by himself shall be distant twenty-five miles or upwards.

Exception.

Poundmaster may send notice to a known owner of impounded cattle and recover horse-hire.

13. And be it enacted, that in every case in which the Owner of any animals impounded in any Pound shall be a person known to the Poundmaster of such Pound, it shall and may be lawful for such Poundmaster to send notice in writing to such owner, informing him that the said animals have been so impounded, and such Poundmaster shall be entitled to receive for the service of such notice horse-hire, at and after the usual tariff-rate; and the amount of such horse-hire shall be payable by the owner receiving the same, and become a charge upon the animals impounded. But no Poundmaster shall send such notice until the animals in question shall have been impounded for the space of forty-eight hours; and if any Poundmaster shall sooner send such notice he shall not be entitled to demand such horse-hire as aforesaid.

Pound-master to keep a "Pound Book."

14. And be it enacted, that it shall be the duty of every Poundmaster to keep a book to be called the "Pound-book," which book shall be kept in the English or Dutch language, according as the Civil Commissioner of the Division shall authorise and direct, and in which shall be entered the date at which any animals shall have been received; a description of the animals, in such a manner as to enable and assist persons seeking strayed or missing cattle to identify and recover the same; the name and residence of the person who shall have sent the said animals to the Pound, the name and residence of the owner or supposed owners; the date of release by owner, when the animals shall be released; the date and particulars of the sale, when the animals shal be sold; and any other matters which the Poundmaster shall be instructed from

time to time, by the Civil Commissioner aforesaid, to ascertain and record. Provided always, that in regard to the form in which all entries in the Pound-book shall be made, the Poundmaster shall obey all such directions as he shall in that behalf receive from the Civil Commissioner aforesaid.

Transcript of Pound Book to be forwarded to Civil Commissioner.

15. And be it enacted, that it shall be the duty of every Poundmaster to make out, and forward to the Civil Commissioner of his division, by every post, or at such longer intervals as such Civil Commissioner shall direct, a copy of all the entries made in the Pound book, between each successive transmission of such copy; and the Civil Commissioner aforesaid shall cause all such copies to be duly filed or otherwise preserved in his office, in some place where the same may be conveniently inspected by all persons desirous to inspect the same; and if any Pound-master shall make, or permit to be made, any wilfully erroneous entry in his Pound-book, or in any copy of any part thereof so forwarded as aforesaid, he shall for every such offence forfeit any sum not exceeding Twenty five Pounds, and not less than Five Pounds.

Poundmaster to take Pound Book to Sales.

16. And be it enacted, that it shall be the duty of every Poundmaster, and he is hereby required, to take with him to every sale of animals impounded, as hereinafter mentioned, his said Pound-book, and such book shall be, free of all claim, for the inspection of all persons desirous to inspect the same, at the office of the Resident Magistrate, when such there is at the place of sale, or otherwise at some convenient place to be approved of by the Civil Commissioner of the division.

Pound Book where to be kept.

17. And be it enacted, that the Pound-book of every Poundmaster shall (except when otherwise provided by this Ordinance, or when the same shall be required in the course of any legal proceeding) be kept at the residence of the Poundmaster, and may be inspected at all reasonable hours, by every person desirous to inspect the same upon payment of a fee of six-pence. And it shall be incumbent upon every Poundmaster to make them sign and deliver to any person applying for the same a copy of any entry or entries in his Pound-book contained, upon being paid by the applicant the sum of one shilling for every entry required to be copied.

Advertisement of sale of impounded animals, when and how to be forwarded to Civil Commissioner.

18. And be it enacted, that when and as often as any animals impounded in any Pound, which shall not be released or taken away within ten days next after the same shall have been received by such Poundmaster, as impounded, such Poundmaster shall prepare and forward to the Civil Commissioner of his division, in order to the pub-

lication thereof as in the next succeeding section provided, an advertisement setting forth the species, marks, and distinguishing peculiarities, (if any), of the animals so remaining in the Pound, and in regard to horses, and horned cattle their color also; and such advertisement shall give notice to all whom it may concern that the animals therein mentioned will be sold at the next ensuing sale of impounded cattle (as hereinafter mentioned) the time and place of holding which sale shall be set forth in such advertisement.

Civil Commissioner to foward Advertisement for insertion in the Government Gazette.

19. And be enacted, that every Civil Commissioner receiving any such advertisement as aforesaid, from any Poundmaster within his Division, shall, except as hereinafter is excepted, forthwith transmit the same to the Secretary to Government in Cape Town, in order that it may be inserted twice successively in the *Government Gazette*.

Exception.

Provided always, that it shall be lawful for any Civil Commissioner, with the approval of His Excellency the Governor for the time being, instead of transmitting such pound notices, as aforesaid, for insertion in the *Government Gazette*, to publish the same in such other, and more convenient manner, as such Civil Commissioner shall suggest, and the said Governor sanction.

Sales to be held every six weeks.

20. And be it enacted, that the successive sales of animals impounded in the several pounds in each division shall, except the first sale from and out of every such pound, take place as nearly as may be every six weeks, and be held at such towns and villages as the Civil Commissioner shall appoint, or where there are none such near any particular pound, then at such other places as the said Civil Commissioner shall think fit; Provided always, that the first sales aforesaid, from and out of every such pound, shall, as much as may be, be so arranged by the Civil Commissioner of each division, as to the time of holding the same respectively, as to cause every successive sale of or from the several pounds in that division to fall upon and be held in different months: And provided also, that every Civil Commissioner shall frame and transmit to the Secretary to Government, for insertion in the *Government Gazette*, once in the month of January, and again in the month of July in each year, a notice setting forth the dates and places at which the several pound sales as aforesaid, for each year, are appointed to take place.

Poundmaster to act as Auctioneer.

21. And be it enacted, that at every pound sale held under the provisions of this Ordinance, the Poundmaster shall act as auctioneer: but no auctioneer's licence shall be necessary in order to entitle any such Poundmaster to

hold any such sale, nor shall any auction duty be payable thereon; and any Poundmaster who shall purchase, or be directly or indirectly interested in any purchase, at any such sale held by him, shall be liable to forfeit any sum not exceeding Twenty-five Pounds, and not less than Ten Pounds.

Hours of sale and manner of selling.

22. And be it enacted, that every such sale as aforesaid shall be held between the hours of ten o'clock a.m. and three o'clock p.m., and that no animal shall be put up for sale until the same shall have been impounded for five weeks at least, unless with the consent of the owner first had and obtained; and that at every such sale all animals, except sheep and goats, shall be put up and sold singly, and the sheep or goats shall be put up and sold in lots not exceeding ten in number; and that in no case shall sheep and goats be put up together in the same lot, or sheep or goats with different marks or brands; and in case of any contravention of any of the provisions of this Section, the Poundmaster who shall have brought or sent to the sale the animal or animals, in regard to which such contravention shall have taken place, shall for each offence forfeit any sum not exceeding Ten Pounds, and be also liable to pay to the owner of any animal sold in contravention of any of the provisions of this Section the full value of the same.

Sales to be for cash, and proceeds how to be applied.

23. And be it enacted, that at every such sale as aforesaid, all animals shall be sold for Cash, and not otherwise, and that the proceeds of every such sale, less the amount of the Pound and other Fees properly payable, and of any damage due or assessed in manner and form as hereinafter mentioned, shall be handed over with all convenient speed, to be by him paid to the owners of animals sold, according to their respective rights. Provided always that when and as often as there shall be a Resident Magistrate, not being also a Civil Commissioner, at the village or place where any such sale as aforesaid shall be held, the proceeds aforesaid shall be handed over to such Resident Magistrate, who shall with all convenient speed pay the same to the Civil Commissioner of the Division. And provided also that if, in any particular case, the animals sold shall not realise sufficient to satisfy all such fees and damages as aforesaid, the proceeds shall be first applied to the payment of the fees aforesaid, and the balance of such fees or damages shall be recoverable from the respective owners by the parties entitled to receive the same by suit or action in any competent court. And provided further, that in case the owner of any animals sold, in respect of which any sum of money shall have been handed

over by any Poundmaster to any Civil Commissioner or Resident Magistrate, shall not, within the space of twelve months from the day of such payment, claim the same, the same shall become the property of Her Majesty the Queen, and be paid into the olonia l Treasury.

Poundmaster's fee for attendance at sales.

24 And be it enacted, that every Poundmaster shall be allowed, for his attendance at every such sale as aforesaid, a fee of ten shillings, to be borne by the several owners of the animals sold in proportion to the amount of purchase money realised on account of every such owner.

Cattle, &c, to be sent to nearest Pound—Exception.

25. And be it enacted, that every person finding any horse, head of horned cattle, sheep, goat or pig, trespassing upon his lands or grounds, may send the same to the nearest accessible Pound, but except as in the next succeeding section is excepted, to none other, and if any person shall, by himself or his servants, ride, or otherwise work or use any animal found trespassing, or detain at his place or on his property any such animal for any space of time exceeding Twenty four hours, he shall, for every such offence, forfeit any sum not exceeding Ten Pounds, to be recovered for his own use, by the owner of the animal or animals so detained.

Penalty for detention beyond 24 hours.

Poundmaster's cattle—where to be sent to.

26. And be it enacted, that when and as often as any animal found trespassing, as in the last preceding section mentioned, shall be known to belong wholly or in part to any Poundmaster, or to any person residing, or having the right to graze such animal upon the place or farm of any Poundmaster, such animal may be sent to the nearest accessible Pound other than that kept by such Poundmaster as aforesaid, provided such last-mentioned Pound be not more than fifteen miles farther off than the Pound kept by such Poundmaster.

Trespass upon outspan places.

27. And be it enacted, that every Magistrate, Justice of the Peace, Field-cornet, Assistant Field-cornet, in any Division, or any person authorised in writing by any of the said persons, may send to the nearest accessible Pound all animals which shall be found upon any outspan place in such Division, not being in the possession of travellers outspanning there, or which, being in the possession of such person, shall be outspanned there for more than twenty-four successive hours, unless such person shall be detained by floods, or some other sufficient cause; and when and as often as any such person as aforesaid takes or sends any such animals to the Pound, he shall be entitled to receive the *mileage*, as hereinbefore provided.

Trespass on or injury

28. And be it enacted, that when and as often as any

animal not belonging to or being in the possession of travellers, shall be found trespassing on or injuring any dam, or tank, belonging to the Government, and intended for the use of travellers and their cattle only, such animals may be sent to the nearest accessible Pound by any of the persons in the last preceding section mentioned, in case there shall not be any person appointed or authorized by Government to take charge of such dam or tank; but in case there shall be any such lastmentioned person, then it shall be his duty to impound all animals liable to be impounded; and he shall be entitled to receive the *mileage* as hereinbefore provided. to public dam or tank.

29. And be it enacted, that if any animals belonging to any person shall be found to have wrongfully trespassed upon or injured any such tank or dam as aforesaid, twice or oftener within the space of three months,—such person shall, over and above all other fees and charges, be liable to forfeit any sum not exceeding Five Pounds. Repetition of offence—penalty.

30. And be it enacted, that if any person shall furiously drive, worry, starve, or wantonly ill-treat any animal found trespassing as aforesaid, or conduct the same to the pound by any except the nearest route, unless some other shall be more desirable for the animal itself, or to avoid standing crops, or divide or separate any number of animals found trespassing at the same time, in order to send them separately to the Pound, and so obtain double or still greater *mileage*, such person shall be liable for every such offence to forfeit any sum not exceeding Five Pounds, and shall, moreover, be liable to make good to the owner the amount of any damage which he may have sustained by any infringement of this section. Wanton ill-treatment of trespassing animals—penalty.

31. And be it enacted, that if any person shall, by threats or violence, or otherwise, rescue or attempt to rescue against the will of the person or persons in charge of any animals lawfully seized in order to be impounded; or shall so rescue or attempt to rescue any animals, after the same shall have been impounded with any Poundmaster; such person so rescuing or attempting to rescue the same shall for every offence forfeit any sum not exceeding Ten Pounds. Rescue.

32. And be it enacted, that the owner of, or other person lawfully claiming, any such animal as in the 25th section of this Ordinance mentioned, which shall be found trespassing in any garden, vineyard, or enclosure, or on cultivated land in which any crop is growing, or cut, but not removed, or in any stack-yard or trap floor, or other enclosed place containing grain, shall be liable to pay as trespass money to the owner of the property trespassed Trespass money—damage in gardens, &c.

upon, for or in respect of each horse, head of horned cattle, pig, or goat, so trespassing, the sum of One Shilling and Six Pence, and for every sheep the sum of One Penny, as damage, exclusive of all pound fees and other charges: Provided always, that when and as often as any animals shall be sent to the pound for or in respect of any such trespass as is in this section mentioned, the person sending the same shall send with them to the Poundmaster a note, in writing, signed by himself, or by his own agent or caretaker, setting forth the number and description of the animals sent, and the species of place or property in or upon which the said animals shall have been found trespassing, and the amount of damage payable under and by virtue of the provisions of this Section, when the complainant shall elect to claim such amount instead of referring the amount of damage to the award of the Field-cornet and land-owners as hereinafter mentioned, or instead of proceeding by way of action; but when the complainant shall elect to refer such amount to such award or to legal proceedings, then the note in writing aforesaid shall, after specifying the animals trespassing, and the property trespassed upon, state the intention of the complainant to proceed for the amount of damage according to law; and if no such note in writing shall be delivered to the Poundmaster, together with the animals sent to the pound, then such animals shall be deemed to have been impounded for an ordinary trespass as in the next succeeding section mentioned. Provided always, that when and as often as any animals shall be conveyed to the pound by the owner or occupier of the property trespassed upon in person, then his verbal statement shall be taken, and be recorded by the poundmaster, and shall be of the same effect as any such note in writing as aforesaid.

In such cases written statement to be sent to Poundmaster.

Complainant may claim award of Field-cornet, or have recourse to law.

When verbal statement may be taken.

Trespass money—uninclosed property.

33. And be it enacted, that when and as often as any such animal as in the preceding section mentioned, shall be found trespassing in or upon any property, not being of the description of any in the last preceding section mentioned, the owner of, or other persons lawfully claiming, such animal, shall be liable to pay as trespass money, to the owner of the property trespassed upon, for or in respect of every horse, head of horned cattle, pig or goat, the sum of Four Pence, and for every sheep, where the number shall not exceed three hundred, the sum of One Half-penny, and where the number of sheep shall exceed three hundred, the sum of One Farthing, for every sheep.

Repeated trespass—

34. And be it enacted, that when and as often as the

same animal or animals, (or any of them,) of the same owner, shall be found trespassing again upon the same property of the same owner, within the space of fourteen days next after any former trespass by the same animal or animals upon the same property, the owner of such animal or animals, so again trespassing, shall be liable to pay double the rate of *mileage*, and of trespass money, in force for the time being in regard to trespasses not being repeated trespasses. double mileage, &c.

35. And be it enacted, that it shall and may be lawful for every district meeting as hereinbefore and hereinafter mentioned, to alter and adopt the provisions in the 32nd or 33rd sections mentioned, by changing the rate to be paid for trespass money as therein specified, or by abolishing any such rate entirely. Provided always, that it shall not be competent for any such district meeting to impose or establish in place or stead of the rate in the 32nd section mentioned, any rate higher than three shillings for any animal other than a sheep, or three pence for any sheep, or to impose or establish in place or stead of the rate in the 33d section mentioned, any rate higher than one-third of whatever rate shall be imposed or established in regard to the trespasses mentioned in the 32d section. District Meetings may alter rate of trespass money. Limit of increase fixed.

36. And be it enacted, that no Poundmaster shall release or deliver up any animal impounded until there shall be paid to him, over and above all other fees and charges, the amount of such damages as may be due and payable under or by virtue of either of the three last preceding sections, for which damages, in case of any release or delivery up of the animals impounded, the Poundmaster shall be responsible. Poundmaster—when liable for damages.

37. And whereas it is expedient to provide for the adaptation of certain clauses of this Ordinance to the peculiar circumstances of particular divisions, should the said provisions be found, upon experience, to be unsuited to such divisions: Be it enacted, that at any time after the first day of January One Thousand Eight Hundred and Forty-nine, it shall and may be lawful for the Civil Commissioner of any Division of this Colony and he is hereby required, upon receiving a requisition to that effect in writing, signed by not less than twenty such land-owners of such division, to call a meeting of the Justices of the Peace of such division, at some time and place to be specified, for the purpose of considering the provisions of the 5th, 6th, 7th, 32d, and 33d sections of this Ordinance, in order to determine whether they or any of them stand in need of alteration. And such meeting shall be summoned, upon a notice to be published, not less District meetings—Justices of the Peace to constitute.

than three weeks before the day of meeting, in the *Government Gazette*, and at such meeting the Civil Commissioner shall take the chair, and every question moved thereat shall be determined by a majority of votes of the persons then present and entitled to vote; and in case there shall be an equality of votes, the chairman shall have an additional or casting vote. And in case it shall be decided at, or by, any such meeting, that any alteration shall be made in regard to any of the rates by any of the respective sections aforesaid established, the Civil Commissioner aforesaid shall, as such chairman as aforesaid, report the particulars of such alterations to the Secretary to Government for the information of his Excellency the Governor; and every such alteration shall be announced by a Government Notice in the *Government Gazette*, together with the date at which such alteration shall commence and take effect in the division in question, and thereupon the rate, charge, or payment mentioned in such notice shall become fixed and binding, and the rate, charge, or payment in this Ordinance contained, for which the rate, charge, or payment in such notice mentioned shall be substituted, shall become void and of no effect. Provided always, that no such meeting shall be competent to alter or interfere with any provision of this Ordinance, other than those contained in the several sections hereinbefore in this section recited, or to alter or interfere with any of the provisions of the said recited sections, except under and within the limits and restrictions in the 8th and 35th sections of this Ordinance respectively contained. And provided, that every rate, charge, or payment in this Ordinance contained, and not altered by any such meeting, shall remain and continue in full force and effect.

Limitation of powers.

Twelve months to elapse before a second meeting.

38. And be it enacted, that at any time after the expiration of twelve months from any such meeting as aforesaid, but not sooner, it shall and may be lawful for the Civil Commissioner of the Division, in and for which such meeting shall have been held, upon a similar requisition to that in the last preceding section mentioned, to call, in manner aforesaid, a similar meeting, for the purpose of altering or adapting the rates, charges, or payments, for the time being; and such second meeting shall have and possess all and singular the powers and authorities, and none other, hereinbefore conferred upon the first meeting aforesaid, precisely as if the rates, charges, or payments for the time being, in any such division, had been the rates, charges, or payments, by this Ordinance imposed; and such meeting shall proceed, and the decision thereof

shall be notified, in the same manner as is hereinbefore provided in regard to the first meeting aforesaid; and such notification shall be attended with the like effect as that of the decision of the said first meeting.

The like period as to every succeeding meeting.

39. And be it enacted, that similar meetings to those in the two last preceding sections mentioned, may successively be summoned upon similar requisitions, at intervals of not less than twelve months, for the purpose of altering and adapting in manner and form as aforesaid, the rates, charges, and payments, for the time being. Provided, however, that no district meeting whatsoever, held under this Ordinance, shall be competent to proceed to or transact any business, unless there shall be present thereat, at the hour appointed for holding the same, at least three members, exclusive of the chairman.

Number to constitute a meeting.

When others beside Justices may meet and act.

40. And be it enacted, that if in any division there shall be fewer than seven Justices of the Peace, (exclusive of the Civil Commissioner,) resident within a distance of twenty-five miles from the Civil Commissioner's Office, such Civil Commissioner, upon receiving any such requisition as aforesaid, shall inform the Governor, for the time being, of the number of Justices within such limits, and thereupon it shall and may be lawful for such Governor, by notice in the *Government Gazette*, to nominate so many other fit and proper persons resident within such limits, as he shall think fit, to meet and act with the Justices assembled at any such meeting. Provided, that every Justice of the Peace resident in any division, shall be entitled to meet and act, no matter at what distance he shall or may reside. And provided, that every person once nominated to meet and act, shall still be competent so to do, although seven or any greater number of Justices may afterwards be resident within the limits aforesaid.

Damage under 38d section may be referred to Field-Cornet and two landowners.

41. And be it enacted, that if in any case the owner of any species of property, in the 33rd section described, shall deem the amount which would be claimable under and by virtue of such of the provisions in that section contained an inadequate compensation for the damage done, it shall and may be lawful for such owner to require that such damage shall be assessed by the nearest Field-cornet and any two land-owners, one to be nominated by the complainant and the other by the owner of the animals which have trespassed. Provided always, that in case the owner of such animals shall be unknown, or shall refuse or neglect to nominate a land-owner, willing and ready to act, then the Field-cornet shall nominate a land-owner in his place or stead, and in case the said Field-cornet and land owners shall not agree in their assessment,

How when referees do not agree.

then the amount agreed upon by any two of them shall be binding.

Mode of proceeding upon reference.

42. And be it enacted, that when and as often as any person shall be minded to refer the amount of damage sustained to the Field-cornet and land-owners as aforesaid, such Field-cornet shall be informed of the trespass within twenty-four hours next after the trespass committed; and he shall fix such time for the inspection as may be most convenient to all parties; and such Field-cornet and land-owners shall be entitled to receive from the complainant for their award the sum of seven shillings and six pence each, which charge, as well as the amount of damages assessed, shall be paid by the owner of the animals which have trespassed, in case the damages assessed shall exceed the amount which would under the provisions of the 33rd, 34th, and 35th sections of this ordinance, have been claimable; but otherwise the charge aforesaid, for the award of the Field-cornet and land-owners, shall be defrayed by the complainant requiring their intervention.

Compensation to referees.

When cost of award shall be paid by complainant.

Award to be in writing —what it shall set forth.

43. And be it enacted, that every award of Field-cornet and land-owners shall be in writing, and shall be signed by such Field-cornet and land owners, or when all cannot agree by some two of them, and be delivered to the complainant, and shall state in words the amount at which the damage done has been assessed, and also whether the complainant or the owner of the trespassing animals is liable for the charge, for the award of the Field-cornet and land-owners.

Animals being impounded, copy of award to be given to Poundmaster.

44. And be it enacted, that when and as often as the animals which shall have done the damage assessed by Field-cornet and land owners in manner aforesaid shall have been impounded previously to the making of the award, a copy of the award, certified by the complainant to be a true copy, shall be sent by him to the Poundmaster of the Pound in which such animals as aforesaid shall be impounded, and thereupon the assessed damages and the charge aforesaid for the award (when such charge shall not be one against the complainant) shall become a charge upon the animals impounded, which shall not be released or delivered up until the same shall be satisfied; and for the payment of the sum, in case of such release or delivery, the Poundmaster shall be responsible.

Diseased sheep— amount of trespass money.

45. And be it enacted, that the owners of any sheep infected with the disease commonly called brand-ziekte or scab, or of any goats infected with the disease commonly called scurvy, which shall be found trespassing upon any species of property shall (except as hereafter excepted) be

liable to pay twice the amount of damages which under the provisions of the 32nd or 33rd section of this ordinance would be claimable in regard to a similar trespass by sheep or goats not so diseased. And in case such diseased sheep or goats so trespassing shall be found mixed with sheep or goats free from disease, and belonging to any other person, then the amount of damage shall be double the amount last mentioned. And any person who shall wilfully drive, or cause to be driven, any diseased sheep or goats, respectively, into or upon the property of any other person, on which there shall be any sheep or goats which shall be respectively free from disease, such person shall, over and above all damages and fees payable by him, be liable upon conviction to be imprisoned, with or without hard labor, for any period not exceeding six months.

Persons wilfully causing trespass, in such case how to be punished.

46. And be it enacted, that nothing in this ordinance contained shall be construed so as to prevent any person complaining of trespass, from seeking redress, according to law, in any competent court. But no person who shall once have claimed damages under the 32nd and 33rd sections of this Ordinance, shall be competent afterwards to require an assessment by Field-cornet and land-owners, nor shall any person who shall once have claimed either such damages or such assessment be competent afterwards to seek redress by legal process. And whenever any complainant shall be minded to proceed at law for the recovery of damages for an alleged trespass, the owner of the cattle impounded, for or on account of such trespass, shall be entitled to release the same upon payment of pound-fees, and upon giving security to the satisfaction of any Resident Magistrate, or Justice of the Peace, or Field cornet, for the payment of any damages or costs which the complainant may recover. Provided always, that every such owner shall be entitled to tender to every such complainant, such sum as he may consider adequate to cover and satisfy such damages as aforesaid, and in the event of such tender being refused, the complainant shall be condemned in the costs of all such legal proceedings as he may afterwards institute, unless the Court, in which the same shall be pending, shall find that such damages exceed the amount so tendered.

Claim of damages under sections 32 & 33d precludes reference under section 41, and either bars legal process.

Recourse being had to law, animals to be given to owner upon payment of fees and giving security.

Effect of tender.

47. And be it enacted, that when and as often as there shall be impounded in any Pound any number of sheep or goats, respectively affected with the respective diseases in the 45th section mentioned, the same shall not be destroyed, but be sold by public sale at the place where the sales of animals impounded in the same Pound are usually

As to place of sale of diseased sheep.

held, in case the Civil Commissioner shall not appoint (as he is hereby authorised to do) some other place for selling diseased sheep; and such sale shall not take place until the expiration of fourteen days from the day of the impounding of the same, and until a notice of such sale shall have been posted at the Court House of the nearest Resident Magistrate, and at the residences of the two nearest Field-cornets. Provided, however, that no other publication of such notice shall be necessary. And. provided, that the sales of diseased sheep and goats shall, in all respects, other than those herein provided for, be regulated in like manner as the ordinary sales hereinbefore mentioned.

Time of sale—notice.

How when the Pound and the property trespassed on are in different divisions having different rates.

48. And be it enacted, that if, in any case, it shall chance or happen that property trespassed upon shall be situated in a division different from that in which the pound proper for the receipt of the animals trespassing shall be situated, and that there shall be in such divisions respectively different rates of *mileage* or trespass money, then mileage and trespass money shall, respectively, be payable according to the rate in and for the division in which the property trespassed on is situate. But all rates payable upon the delivery to, and receipt by, the Poundmaster, of such animals, and for herding, grazing, and feeding the same, shall be paid according to the rate in and for the division in which the pound is situate.

Molestation of animals on owner's property,—penalty.

49. And be it enacted, that every person who shall, (without the permission of some person entitled to give permission,) by himself, or any person acting by his authority, molest, drive, or scatter the horses, cattle, sheep, or goats, of any other person, upon the property of such last mentioned person, or pursue or take away any such animals from off the property of their owner, whether under pretext of seeking for or separating his own animals, or any other purpose, shall for every such offence forfeit any sum not exceeding Ten Pounds.

What animals may be destroyed for trespass under section 32.

50. And be it enacted, that all pigs, poultry, and pigeons, found trespassing in or upon any sort or species of property, in the 32d section of this Ordinance specified, may lawfully be destroyed, while and where so trespassing, by the owner of such property, or any person acting by his authority. And that any dog found trespassing, between the first day of December and the first day of April, in any enclosed vineyard or garden in which grapes are growing, and doing damage therein, may also be destroyed.

Stallions trespassing—penalty.

51. And be it enacted that the owner of any stallion horse, or stallion ass, above the age of two years, which shall be found, without having any person riding, driving,

or otherwise in charge of the same, trespassing upon the property of any other person, shall be liable to forfeit any sum not exceeding Five Pounds, and not less than One Pound. Provided always, that if such horse or ass shall, when so trespassing, be found amongst mares, or with any mare not belonging to the owner of such horse or ass, then the owner thereof shall be liable to forfeit any sum not exceeding Thirty Pounds, and not less than Six Pounds. And provided, that in calculating the said age, the term of two years shall be calculated from the first of June of the year in which the animal was foaled. And provided also, that the proclamation of the then governor of this colony, Lord Charles Henry Somerset, of the 23d May 1823, respecting entire horses running loose, shall be repealed; and the same is hereby repealed accordingly.

If amongst mares—penalty.

How to calculate age.

Proclamation of May 23, 1823, repealed.

52. And be it enacted, that the owner of every bull or ram above the age of twelve months respectively, which shall be found trespassing upon the property of any other person, shall be liable to forfeit any sum not exceeding Two Pounds and not less than Ten Shillings. Provided that if any such bull or ram shall be found amongst cows or ewes respectively, the penalty aforesaid shall be doubled.

Bulls, &c., trespassing—penalty.

53. And be it enacted, that the penalties in the two last preceding sections respectively mentioned shall be payable over and above all pound fees or other charges.

Penalties in sections 51 and 52, to be over and above fees, &c.

54. And be it enacted, that for or in respect of any of the provisions of this ordinance, in regard to which no penalty shall have been hereinbefore or hereinafter expressly provided, every person so contravening the law shall incur and be liable to any penalty not exceeding Five Pounds.

As to contraventions for which special penalties are not fixed.

55. And be it enacted, that all fines and penalties imposed by any of the provisions of this ordinance shall be recoverable in the court of the Resident Magistrate of the district in which the offence shall have been committed, and may be proceeded for by any person in regard to whose property the act or omission entailing any such fine or penalty shall have taken place. And any fine or penalty which shall not be incurred by any act or omission affecting the property of any particular person, may be proceeded for by any person whomsoever. And all fines and penalties, when recovered, shall be paid to the person proceeding for the same.

Fines and penalties, how recoverable.

To whom to be paid.

56. And be it enacted, that when and as often as any person convicted of any offence against any of the provisions of this ordinance shall not forthwith pay or satisfactorily secure the penalty imposed, it shall and may be lawful for the court imposing such penalty, in case no other

Non-payment of Penalties—term of imprisonment limited.

term of imprisonment shall have been hereinbefore provided for or in respect of the non-payment of such fine or penalty, to sentence the offender to imprisonment with or without hard labor, for any term not exceeding two months.

Costs—where proceeding for penalties is vexatious.

57. And be it enacted, that when and as often as any proceeding for the recovery of any such penalty under the provisions of this ordinance shall appear to the court before which such proceeding shall come, to be frivolous and vexatious,—it shall and may be lawful for such court to adjudge to the party proceeded against double his full costs of defence, to be taxed and assessed by such court and to be paid by the party prosecuting; such costs to be recoverable by the like process as that by which costs awarded to be paid by a plaintiff in any civil suit pending in such court shall be by law recoverable.

Interpretation of Ordinance.

58. And be it enacted, that in the interpretation of this ordinance the following words and expressions are intended to have the meanings hereby assigned to them, so far as such meanings are not excluded by the context or the nature of the subject matter, that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender, to apply also to persons and inferior animals of the feminine gender; and that the term horse shall include mules and asses, colts, fillies and foals, and that the term horned cattle shall include bulls, cows, oxen, heifers and calves, and that the term sheep shall include rams, ewes, wethers and lambs. And that the term Civil Commissioner shall include, together with Civil Commissioners, Assistant Civil Commissioners, and the Officers acting as either Civil Commissioners or Assistant Civil Commissioners; and that the term division shall designate the territory under the fiscal administration of a Civil Commissioner or Assistant Civil Commissioner.

Exemption of Municipalities, but Municipal Pound may be used in certain cases.

59. And be it enacted, that nothing in this ordinance contained shall extend to any trespass committed or pound erected within any municipality. Provided always, that animals seized or detained for or on account of any trespass committed beyond the limits of any municipality, may be sent to any pound within such limits which will receive the same, in case there shall not be any other pound which is not farther off by seven miles or upwards than the pound of the municipality. And all animals impounded in any pound within a municipality shall be subject in all respects to the regulations of such pound. But all questions respecting trespasses committed beyond the

limits of any municipality shall be determined, and the damages claimable therefrom shall be regulated, by the provisions of this Ordinance.

Ordinance not to extend to Natal.

60. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Ordinance when to take effect.

61. And be it enacted, that this Ordinance shall commence and take effect from and after the first day of November in the year of our Lord One thousand eight hundred and forty-seven.

No. 17,—1847.] ORDINANCE [Sept. 11, 1847.

For declaring the true meaning and construction of the 21st section of the Ordinance No. 8, 1843, entituled "Ordinance for improving the Public Roads of this Colony."

Preamble.

Whereas by the Ordinance No. 8, 1843, entituled "Ordinance for improving the Public Roads of this Colony," the valuation, for the purpose of Assessment of all the Immoveable Property in each and every Division of the said Colony is contemplated and provided for: And whereas, in order to obtain such valuation, it is by the 20th section of the said Ordinance provided, that valuators should, or might, be appointed for the purpose of valuing all the Immoveable Property in the several Divisions of the Colony, (excepting such as should have been already valued for the purposes of any Municipality within any of the said Divisions) for the purpose of Assessment under the said Ordinance, which valuation should (subject to correction in manner and form as in the said section mentioned) become fixed and binding for the purposes of the said Ordinance: And whereas, by the 21st section of the said Ordinance, it is provided that the valuation for the time being of the Immoveable Property, situated within any Municipality which should be within any Division of the Colony, should be deemed and taken to be binding for the purpose of such Assessment as aforesaid, and that no other valuation should be necessary: And whereas, by the 22nd section of the said Ordinance, it is provided that as soon as the valuation of the whole of the Immoveable Property in any Division should have been completed in manner aforesaid, it should be lawful for the Central Board of Commissioners of Public Roads, to assess and impose, in manner and form as therein set forth, a certain Road Rate: And whereas, by the 24th section of the said Ordinance, provisionsis made for assessing

and imposing, by the said Board, a second and a third rate upon the property aforesaid, not exceeding One Penny in the Pound upon its value, according to such valuation as aforesaid: And whereas the said Board have, in the Division of the Cape, and in certain other Divisions of the Colony, assessed and imposed a second rate for the purposes of the Ordinance aforesaid, which second rate was estimated and supposed to be payable, according to the same valuation as that according to which the first rate, under the provisions of the said Ordinance, had been previously assessed and imposed: And whereas it has been objected that, according to the legal construction and effect of the several provisions aforesaid and of the said Ordinance, the valuation of the Immoveable Property in any Division, according to which the first rate thereon may have been assessed and imposed, is not, so far as any such property is within any Municipality, fixed and binding for any future rate, but, on the contrary, that every second or other rate upon the immoveable property within any Municipality in any Division, must be payable upon, and according to, the Municipal valuation which shall exist at the time of the assesment and imposition of such rate: And whereas the true intent and meaning of the said Ordinance was, that there should be completed, by adding to the valuation of the Immoveable Property in any Division, not being within any Municipality, the municipal valuation for the time being of the immoveable property being within any Municipality, one, and but one, valuation for assesment of taxation of the whole of the immoveable property in each Division, in regard to which one completed valuation the several rates by the said Ordinance authorised, and constituting collectively the assessment of such property, should be estimated and imposed: And whereas any construction other than that last mentioned, would not merely be inconsistent with the true intent and meaning of the said Ordinance, but would be productive of inequality of condition between persons resident beyond the limits of Municipalities, and persons resident within such limits, and lead besides to sundry other inconveniences: And whereas, in order to avoid such inconveniences, it is expedient to delare and establish the true intent and meaning of the law: Be it therefore declared and enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that, for the purpose of all and singular the several rates in and by the said Ordinances authorised to be imposed or assessed by the Central Board aforesaid, or by any Divisional Board as in the said Ordi-

True intent and meaning of Ordinance No. 8, 1843.

The valuation of Immoveable Property within a Municipality, which subsists at the time of the Assessment of the first Road Rate, to be deemed fixed and binding for the purpose

nance mentioned, the valuation for the time being of the immoveable property situated within any Municipality, as in the 21st section aforesaid of the said Ordinance mentioned, shall be deemed, taken, and construed to mean such valuation, and none other, as shall subsist, and be in force, or have subsisted or been in force, for municipal purposes, at the time when the first rate, under any of the provisions of the said Ordinance, shall, by either of the boards aforesaid, be or have been assessed or imposed in and for the Division in which such Municipality shall be situated; and such valuation shall be deemed and taken to be, to all intents and purposes, as fixed aud binding upon the immoveable property within such Municipality, for the purposes of the said Ordinance, as the valuation by valuators, as in the 20th section of the said Ordinance mentioned, is fixed and binding upon the other immoveable property within the said Division.

of every succeeding Rate.

2. And be it enacted, that no valuation of immoveable property in any Division, upon or according to which any such first rate as aforesaid shall have been once assessed or imposed, shall be deemed or taken to be, or to have been, altered or in any manner affected, by reason that any property, not valued for the purposes of any Municipality, at the time of the valuation by any such valuators as in the said 20th section of the said Ordinance mentioned, and in regard to which the valuation thereof by such valutors shall have once become fixed and binding, shall afterwards be or have been valued for the purposes of a Municipality; nor shall any such valuation for such first rate, being the valuation for municipal purposes, of immoveable property situated within any Municipality, be deemed or taken to be altered, or in any manner affected, by reason that such Municipality may afterwards cease to exist.

Subsequent valuation for Municipal purposes not to alter the valuation according to which first rate was assessed;

Nor shall any valuation, being the valuation for Municipal purposes, be altered where Municipality ceases to exist.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the date of the promulgation thereof.

Ordinance when to take effect.

No. 18.—1847.] ORDINANCE [Sept. 11, 1847.

For applying a sum not exceeding £179,981, 9, 7 *for the service of the year* 1848.

WHEREAS the Expenditure required for the service of the Government of this Colony for the year 1848, has been estimated at the sum of One Hundred and Seventy-nine

Thousand, Nine Hundred and Eighty-one Pounds, Nine Shillings, and Seven Pence:—

Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that a sum not exceeding One Hundred and Seventy-nine Thousand, Nine Hundred and Eighty-one Pounds, Nine Shillings, and Seven Pence, be charged upon the Revenue of the said Colony, for the service of the year 1848, and applied in the manner following, that is to say:—

For the Expenditure of the Civil Establishment,—a sum not exceeding Fifty-five Thousand, Nine Hundred and Seventy-eight Pounds, Fifteen Shillings, and Eleven Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 1.

For the Expenditure of the Ecclesiastical Establishment,—a sum not exceeding Ten Thousand, Nine Hundred and Eight Pounds, Fourteen Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 2.

For the Expenditure of the Educational Establishment,—a sum not exceeding Eight Thousand and Two Hundred Pounds, in the manner set forth in the Schedule hereunto annexed, marked No. 3.

For the Expenditure of the Medical Establishment,—a sum not exceeding Five Thousand, Eight Hundred and Ninety-two Pounds, and Five Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 4.

For the Expenditure of the Judicial and Law Establishment,—a sum not exceeding Twenty-six Thousand, Two Hundred and Seventeen Pounds, and Six Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 5.

For the Expenditure on account of Police, Prisoners, and Gaols,—a sum not exceeding Twenty-two Thousand, Eight Hundred and Fourteen Pounds, Eight Shillings, and Six Pence, in the manner set forth in the Schedule hereunto annexed, marked No. 6.

For the Expenditure of the Road Department,—a sum not exceeding Twenty-three Thousand Pounds, in the manner set forth in the Schedule hereunto annexed, marked No 7.

For the Expenditure on Account of Aboriginal Native Tribes,—a sum not exceeding Six Hundred and Thirty-two Pounds, and Ten Shillings, in the manner set forth in the Schedule hereunto annexed, marked No. 8.

For the Expenditure on Account of Pensions and

Retired Allowances,—a sum not exceeding Eleven Thousand and Eighteen Pounds, Nine Shillings, and Eight Pence, in the manner set forth in the Schedule hereunto annnxed, marked No. 9.

For the Expenditure on Account of Miscellaneous Services,—a sum not exceeding Fifteen Thousand, Three Hundred and Nineteen Pounds, in the manner set forth in the Schedule hereunto annexed, marked No. 10.

[Here follow the Schedules.]

No. 19,—1847.] ORDINANCE [Sept. 11, 1847.

For applying a Sum not exceeding £11,365 9 8 for the Service of the Year 1847, in addition to the Sum already in that respect provided.

Whereas by Ordinance No. 30, bearing date the 30th day of October, 1846, it is enacted that a Sum not exceeding One Hundred and Sixty One Thousand, Eight Hundred and Fifty-four Pounds, Fifteen Shillings, and Ten Pence, required for the Service of the Government of this Colony for the Year 1847, be applied in the manner and for the purposes in the said Ordinance detailed and set forth;—And whereas no provision has in the said Ordinance been made for the undermentioned Services, that is to say:—

To the Natal Government,			
Customs' Duties received upon Goods imported here, and afterwards exported to and landed at Natal, after deducting the Customs' Duties upon Goods imported at Natal, and subsequently exported to this Colony,	£3883	19	2
Official Postage paid in 1846, - -	1432	6	6
Surveying Crown Forest Lands in the Division of George, - - -	1454	4	0
Passage Money to England of Sir P. Maitland and Colonel Hare, -	1200	0	0
Gratuity to the Public Library at Graham's Town, - - - - -	200	0	0
For arresting the progress of the Drift Sands in the Cape Flats, - -	1000	0	0
Boat House and Life Boat at Port Elizabeth, - - - - -	195	0	0
Repairs and enlargement of Gaols in the Country Districts, - - -	2000	0	0

Amounting in the whole to Eleven Thousand, Three Hundred and Sixty five Pounds, Nine Shillings, and Eight Pence:—

Be it, therefore, enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that the said Sum of £11365 9 8, to be so applied as aforesaid, shall be, and the same is hereby, charged upon the Revenue of the said Colony, for the Service of the Year 1847, as fully, and to all intents and purposes, as if the same had been included in and sanctioned by the said Ordinance No. 30, of 1846.

No. 20,—1847.] ORDINANCE [Oct. 29,—1847.

For Relieving Agricultural and other Produce, and other Articles, from the necessity of passing through Public Markets.

Preamble.

WHEREAS under and by virtue of certain powers and authorities contained in the following Ordinances respectively, that is to say, the Ordinance No 9, 1836, entituled "Ordinance for the Creation of Municipal Boards in the Towns and Villages of this Colony, on which the local regulations of each shall be founded;" the Ordinance No. 6, of 1837, entituled "Ordinance to authorize the Governor of the Colony, by and with the advice of the Executive Council, to establish markets, and provide regulations for the same, in villages and other places not being Municipalities;" and the Ordinance No 1, 1840, entituled "Ordinance for the better regulation of the Municipal Board fo Cape Town, and the vicinity thereof;" Markets have been established in various towns and villages throughout the Colony, and various regulations regarding the said markets, having the force of law, been from time to time framed and published: And whereas, by the respective regulations of and concerning the said markets respectively, or the greater number of the said markets, it is provided and required that certain produce and other articles brought into the said towns or villages, shall be obliged to pass through the market established within the same, and be there sold by public sale, in case the same shall not have been previously entered, in manner and form as by such regulations respectively prescribed, upon the registry of such market, on pain of certain penalties, in and by the said regulations in that behalf provided: And whereas the compulsory provisions aforesaid, whereby the owners of produce, or other articles brought into such towns or villages for sale, are prevented from selling the

same where, and when, and in what manner, they themselves deem best, and are forced to pass the same through the public market, and pay market dues and charges thereupon, are subversive of that freedom in regard to their dealings which the inhabitants are entitled to enjoy, and are justly deemed oppressive by many farmers and others frequenting the several towns and villages in which such compulsory provisions exist: And whereas it is expedient to annul and make void all such compulsory provisions, leaving all such markets as aforesaid to be resorted to by persons voluntarily desirous of so doing, but none other: Be it therefore enacted, by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that all municipal or market regulations heretofore framed and published under and by virtue of any of the aforesaid Ordinances respectively, in so far as such regulations, or any of them, shall be repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be repealed, avoided, and annulled, and the same are hereby repealed, avoided, and annulled, accordingly.

All Municipal and Market Regulations repugnant to or consistent with the provisions of this Ordinance repealed.

2. And be it enacted, that no person conveying or carrying any agricultural or other produce, or any article, matter, or thing whatever, to and into any town or village in this colony, shall henceforth be required or obliged, under any pain or penalty whatsoever, to carry or convey the same into or upon any market established in such town or village, under or by virtue of the said Ordinances respectively, nor to pass the same through, or sell the same, at any such market, nor to pay or satisfy any manner of municipal or market dues, or charges, in respect of any produce, article, matter, or thing, not voluntarily carried or conveyed into or within the precincts of the markets, nor to enter, or cause to be entered, upon any market registry, any produce, article, matter, or thing, not, as aforesaid, voluntarily brought to such market; but, on the contrary, all persons whomsoever shall be fully and lawfully entitled to bring into, through, or out of every town or village, for sale or barter, or any other purpose, any description of property whatsoever, and to dispose of the same elsewhere than at or on the public market, or to take the same away again, as he shall deem expedient, without being thereby liable to pay any fine, forfeiture, due, or charge whatsoever: Provided always, that nothing herein contained shall be taken or construed so as to impair or affect any such market regulation as aforesaid, so far as it may relate to any produce, article, matter or thing which shall be voluntarily carried

No produce, &c. compellable to pass the Market.

or conveyed into or within the precincts of any such market as aforesaid, in order to be sold or offered for sale thereat; and such produce, article, matter, or thing shall be subject to all such regulations, and be liable to the like dues and charges as if this Ordinance never had been passed

No future Municipal or Market Regulation to be compulsory in regard to the use of any Market.

3. And be it enacted, that it shall not be competent or lawful for any municipal or market regulation to be hereafter framed and published, whether under and by virtue of the Ordinances aforesaid, or of the Ordinance No. 4, 1839, entituled "Ordinance for the creation of a Municipal Board for the Districts of Greeen Point and Sea Point;" to make or render it compulsory upon any person to convey or carry any produce, matter or thing, to any particular market or place of sale, or to impose any fine or penalty upon any person for not conveying or carrying the same to such market or place, or to impose any due or charge upon or in regard to the sale, barter, or other disposition of any property, not voluntarily and actually conveyed or carried into or upon the public market.

Present limits of Markets to be preserved till altered by law.

4. And be it enacted, that the limits of every market established in any town or village under or by virtue of any of the Ordinances aforesaid respectively, shall remain and continue as fixed or reputed, at the time of the promulgation of this Ordinance, unless altered or enlarged by some regulation, municipal or otherwise, having the force of law, duly framed and published.

Ordinance not to extend to Natal.

5. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance, when to commence.

6. And be it enacted, that this Ordinance shall commence and take effect from and after the 1st day of January, 1848.

No. 21,—1847.] ORDINANCE [Oct. 29, 1847.

For Improving the Ports, Harbours, and Roadsteads of this Colony.

Preamble.

WHEREAS it is expedient, in order to facilitate and encourge the export and coasting trade of this colony, that provisions be made, by law, for increasing the safety and convenience of the several Ports, Harbours, and Roadsteads thereof, and, generally, for improving the same; And whereas such improvment may most fitly and effectively be made by means of local boards of commissioners, to be invested with all necessary powers and

authorities,—Be it therefore enacted, by the Governor of the Colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this colony to nominate and appoint for, or in regard to, any Port, Harbour, or Roadstead in this colony, which shall be deemed by him to need improvement, a board of commissioners, to be called and known by such style and title as the said Governor, when nominating and appointing the same, shall bestow or prescribe.

Governor may appoint Commissioners.

2. And be it enacted, that every such board of commissioners shall consist of so many fit and proper persons, not less than three nor more than five, as the said Governor shall deem sufficient, who shall from time to time be appointed by proclamation, to be from time to time issued in the *Government Gazette*, and such persons, so appointed, shall continue to be members of the board for or in regard to which they shall have been nominated until their respective appointments shall be revoked by some proclamation to be issued as aforesaid; and every person who shall be appointed to be a member of any such board, shall, before proceeding to act as such, take and subscribe, before some resident magistrate or justice of the peace, the following declaration, which declaration such magistrate or justice is hereby authorized to administer, that is to say: "I, A. B. do declare that I will faithfully execute the duties of a commissioner of (*here state the style and title of the particular board*) appointed by His Excellency the Governor, under and by virtue of the provisions of Ordinance No. 21, 1847." And every such declaration, so taken and subscribed, shall be forwarded to the Secretary to Government, to be preserved in the Colonial Office.

Board of Commissioners how to be appointed.

3. And be it enacted, that the said Governor shall, by proclamation as aforesaid, from time to time, nominate and appoint one of the members of every such board, as aforesaid, to be the chairman thereof; and the said board shall hold its meetings at such times, and at such place or places, as the members thereof shall find it convenient for the despatch of business to appoint; and such a number of members as shall by any such proclamation as aforesaid be directed shall form a quorum, and shall be competent to exercise the several powers and authorities hereinafter mentioned and granted to every such board; and at any meeting of any such board at which the chairman for the time being shall not be present, some member thereof present shall be chosen, by a majority of votes of the members present, to take the chair; and when-

Governor to appoint Chairman,—and fix a quorum.

ever, at any meeting of any such board, the votes of the members in regard to any question shall be equally divided, the chairman, besides his vote as a member, shall have a casting vote. And every such board shall be competent to frame all necessary rules and regulations for the due and proper despatch of business.

Board to take measures for improving Harbour, &c.

4. And be it enacted, that it shall and may be lawful for every such board, and it shall be the duty thereof, so far as a necessity shall appear to exist, and the means at its disposal shall permit, to take measures for improving, by means of piers, wharfs, landing places, moorings, engines, and other works of a like nature, the port, harbour, roadstead, bay or inlet, for or in regard to which such board shall have been appointed.

Advances for preliminary expenses,—how made and to be repaid.

5. And be it enacted, that it shall and may be lawful for every such board as aforesaid, and it is hereby required, to frame and transmit to the Governor aforesaid a report setting forth what particular works appear to the said board to be most required for the improvement of the port or place in regard to which such board shall have been appointed, and stating, as accurately as may be, the probable nature and cost of such preliminary examinations, surveys, plans, and estimates, as shall be necessary, in order to determine in regard to the practicability and expense of such proposed works; and thereupon it shall and may be lawful for the said Governor, should he approve of such report, to cause to be issued, such a temporary advance, from time to time, as he shall find necessary, from the colonial treasury, to such board as aforesaid, to be by it applied in procuring and prosecuting, in respect of such work or works as the said Governor shall approve of and direct, any such examinations, surveys, plans and estimates as aforesaid; and every such temporary advance as aforesaid shall be repaid to the colonial treasury by the board receiving the same, from and out of any funds or monies to be by it received, borrowed, or raised, under the provisions and for the purposes of this ordinance; but in case there shall be no such funds or monies, then such advance shall become a charge upon, and be borne by, the public revenue.

Loans to be authorised by vote of Legislative Council.

6. And be it enacted, that when and as soon as the necessary examinations and surveys, plans and estimates, shall have been made or caused to be made by any such board, in respect of any intended work or works as aforesaid, the same shall be sent in by such board for the inspection and approval of the said Governor; and thereupon it shall and may be lawful for the said governor, with the advice and consent of the legislative council of

the colony, to be declared by any vote or resolution of the council, to authorize any such board to borrow and take up, from time to time, upon interest, such sum or sums of money as may be necessary for the execution of any such work or works, and to engage and pledge the credit and responsibility of the public revenue of this colony, for the repayment of the principal and interest of every such sum as shall be so borrowed.

Colonial Revenue pledged as security.

7. And be it enacted, that all sums of money which shall be borrowed or taken up by way of loan, by any such board as aforesaid, shall be borrowed and taken up in such amounts, and for such times, and at such rate of interest, as the Governor aforesaid, with such advice and consent as aforesaid, to be declared as aforesaid, shall approve of, and all such sums shall be a charge upon and payable out of such tolls, charges, fees, and revenues as shall, under and by virtue of any of the provisions in that behalf hereafter mentioned, be claimable and recoverable by such board, for or in respect of the use by any person or persons of all or any of the works to be provided and completed by such board; and every bond, hypothecation, or other deed necessary for the securing of the due and punctual repayment of every such loan, with interest thereon in the meantime, shall be executed by and on behalf of the board borrowing the same by the chairman of such board, in his capacity as such chairman, and shall be executed by and on behalf of the colonial government by such person as shall by the secretary to government, in the name of the Governor aforesaid, by any writing under his hand, be authorized to execute the same; and the execution by any such lastmentioned person of any such bond, hypothecation, or other deed as aforesaid, as surety in solidum and co-principal debtor, for or in respect of the punctual payment of any principal sum with interest, shall have the force and effect of pledging and engaging the public revenue of this colony for the due fulfilment of the stipulations and provisions in the said deed contained, and by the board aforesaid to be performed.

Loans how to be effected.

8. And be it enacted, that it shall be lawful for every such board, and it is hereby empowered, from time to time, to appoint such and so many surveyors, engineers, clerks, officers, and other persons, as it shall deem necessary to employ in the execution of any of the powers conferred upon such board by this ordinance, and may, from time to time, remove such surveyors, engineers, clerks, officers, and other persons, or any of them, and appoint others in their stead, and fix the respective duties and salaries of such surveyors, engineers, clerks, officers, or

Boards empowered to employ engineers, &c.

other persons, and, if it shall think proper so to do, take such security from any surveyor, engineer, clerk, officer, or other person appointed by virtue of this ordinance, for the due and faithful execution of his office or employment, as the said board shall think fit; but no amount of salary shall be assigned to any person engaged for an indefinite period, or for any definite period longer than six months, until the same shall have been first approved of by the Governor aforesaid.

Boards, with Governor's consent, may use public lands,—and excavate materials.

9. And be it enacted, that it shall and may be lawful for every such board, by and with the consent of the governor aforesaid, to enter upon and take possession of so much of any land belonging to the Queen's most excellent Majesty as shall be required for the purpose of any of the works, matters, or things aforesaid, by such board to be constructed or made, or for any other purpose relating to the execution of this ordinance. And also to enter upon all lands of Her said Majesty lying convenient to any such works, and there to dig for, excavate, and carry away all such stones, clay, or other materials as may be required or serviceable for the making and repairing of any of the said works.

Boards clothed with the rights of Government in regard to private property

10. And be it enacted, that, for the purpose of executing any of the objects of this ordinance, it shall be lawful for every such board, and it is hereby authorised, to take and use any land, and to dig out and carry away any material belonging to, or being found in or upon the land of any person or persons whatsoever, and which land shall adjoin or lie convenient to any work to be performed or carried on, and that such board shall be, and is hereby invested, for the purpose of so doing, with all and singular the legal rights, if any, belonging to the government of this colony, in respect to the taking of any such land adjacent to the sea, and the raising and carrying away such materials for making and repairing roads or harbours, and whether such rights shall have been preserved to the said government by the proclamation of His Excellency Sir John Francis Cradock, bearing date 6th day of August, 1813, permitting the conversion of lands on loan into places on perpetual quitrent, or shall have been created by express stipulation or condition in any grant of freehold property, or shall exist in any other way or manner whatsoever.

Boards empowered to treat for land and Materials, and all disputes to be settled by arbitration.

11. And be it enacted, that in case any such board shall require to take or use any land, or to dig out or carry away any materials belonging to any person who shall not be bound by law to allow the said board so to do, without requiring any recompense or payment, by

reason of the powers and authorities in the last preceding section delegated to, or bestowed upon, the said board, and which person shall think proper to require compensation from the said board, it shall be lawful for the said board, and it is hereby authorised, to treat and agree with every such person for the purchase or hire, as the case may be, of any such lands or materials as last aforesaid, and, generally, to enter into such contract or contracts relative to the obtaining of any such land or materials, upon such terms and conditions as it shall judge expedient. And if any such person and the said board shall not agree upon the purchase money, or hire, or other recompense, to be respectively given by the one party and accepted by the other, then the said board shall cause to be served upon such person a written notice, offering, as recompense or compensation, whatever sum of money it shall deem sufficient, and requiring such person to state, in writing, to the said board, or to some person by it appointed, within a certain limited time, to be specified in the said notice, whether he is willing to accept the sum therein mentioned, or not. And in case such person shall refuse to accept the sum offered, or shall neglect to reply to said notice, then the said board shall, by another notice in writing, call upon such person to refer to arbitration the amount of recompense or compensation to be paid to him by the said board, and for that purpose to transmit to the said board, within a certain reasonable time, to be specified in the said last-mentioned notice, the name of some person whom he shall select to be an arbitrator upon such arbitration; and the said board, upon receiving the name of the person so selected, shall nominate a second arbitrator, and shall cause a deed of submission to be prepared, which shall be signed on behalf of the said board, by the secretary of the said board for the time being, and by the person claiming such recompense or compensation as aforesaid, and which shall clearly set forth the matter to be determined by the said arbitrator, and shall contain, amongst other things, a direction to the said arbitrators, to set off against and deduct from the amount of such recompense or compensation as would otherwise be claimable, the amount at which they shall estimate the benefit and advantage derived, or to be derived, by the person claiming recompense or compensation, by reason of the formation or improvement of the work in regard to which the question shall have arisen, together with a power to the said arbitrators, in case of a difference in opinion, to call in an umpire, whose decision shall be final; and the award of such

arbitrators or umpire, as the case may be, shall be made a rule of the supreme court, and shall be binding and conclusive, and may be pleaded in bar of any action or proceeding at law, brought for or on account of the same subject-matter. And in case such person as aforesaid, claiming such recompense or compensation, shall neglect or refuse to name some person to be such arbitrator as aforesaid, or to sign the said deed of submission, then it shall be lawful for the said board, and it is hereby authorized, to lodge in some joint stock bank, in the colony, the sum of money offered by it as aforesaid, in its first notice in this section mentioned, for or on account and at the risk of such person as aforesaid, who shall at all times be entitled to draw the same out of the said bank, as his absolute property; and the said board, upon so lodging the said sum, shall be authorized and entitled to take and use the land or materials in question as freely as if the said sum had been agreed upon between the parties as the sum to be paid, or had been awarded by arbitrators or an umpire, under the provisions of this section, and as if all acts by law required for vesting in the said board a sufficient title to the use of, or property in, the land or materials aforesaid had been duly done and performed.

Boards how to proceed when owner undiscoverable.

12. And be it enacted, that in case any such board as aforesaid shall require to take or use any of the land, or to dig out or carry away any of the materials in the last preceding section mentioned, of which the owner or owners shall be absent from the colony, and not represented by any agent duly accredited, or shall not be discoverable, then it shall be lawful for the said board, and it is hereby authorized, to cause a notice to be inserted in the *Government Gazette*, for four successive weeks, describing as accurately as may be, the land which is required to be taken or used, or from and out of which materals are required to be dug out and carried away, and calling by name upon the owner or owners of the said land or materials, if known, or, if not known, then upon the owner or owners, whoever he or they may be, to take notice, that the said board is ready and willing to treat with the owner or owners, or any person duly authorized by him or them, for the recompense or compensation to be made or paid by the said board, for the said land or materials, and requiring such owner or owners to apply, within forty-two days from the date of such notice, which shall be the day of its first publication, to the said board, stating the recompense or compensation claimed; and if the owner or owners shall so apply within the said period, then the like proceedings, in regard to the agreeing for, or other-

wise determining, the recompense or compensation to be respectively given and received, shall in all respects be had and taken, which are prescribed in the last preceding section, precisely as if the said owner or owners had, from the first, been in actual occupation; and in case such owner or owners shall not apply to the said board, within the said period, then it shall and may be lawful for the said board to appoint some competent person to appraise the value of the land or materials required (setting off against and deducting from the value of such land or materials, the amount at which the appraiser shall estimate any benefit or advantage derived, or to be derived, by the owner or owners of the said land or materials, by reason of the formation or improvement of the work, in regard to which the question shall have arisen,) and such person shall make oath before some justice of the peace (which oath every justice of the peace is hereby empowered to administer), that he hath, to the best of his judgment, fairly appraised such value,—and, thereupon, it shall and may be lawful for the said board to pay whatever sum such person shall have valued the land or materials in question at, into the guardian fund, to the credit of the party or parties entitled thereto, subject to the same provisions in all respects which are provided by the Ordinance No. 105, bearing date the 5th of July, 1833, in regard to monies placed in the said fund, belonging to persons absent from the colony; and the said board upon so paying the said sum, shall be authorized and entitled to take, or to use, the land or materials in question, as freely as if the said sum had been agreed upon between the parties as the sum to be paid, and as if all acts by law required for vesting in the said board a sufficient title to the use of, or property in, the land or materials aforesaid, had been duly done and performed.

Certain property to vest in Boards.

13. And be it enacted, that all works constructed, altered, repaired, or improved by any such board as aforesaid, shall vest in such board, together with all lands reclaimed by any such board from the sea.

Boards may dispose of unnecessary Lands.

14. And be it enacted that all lands which shall, under and by virtue of any of the provisions of this ordinance, become vested in any such board as aforesaid, and which shall be or become unnecessary for the purposes of any of the works under the management or administration of such board, may be sold or alienated by such board, and the monies arising from the sale or alienation thereof shall be applied by the said board to the purposes thereof: Provided always that no such board shall sell or alienate any such land, without the consent of the Governor afore-

said first had and obtained; and provided also that, in the application of the proceeds thereof, the said board shall conform to such directions in that behalf as the said Governor shall issue.

Tolls and Rates how imposed.

15. And be it enacted, that when and so often as any pier, harbour, quay, landing place, engine, moorings, or other work shall become ves'ed in any such board as aforesaid, under the provisions of this ordinance, it shall and may be lawful for the said board, and they are hereby authorized, to levy or cause to be levied and paid for the use of such pier, harbour, quay, landing place, engine, moorings, or other work, such tolls and rates as the Governor aforesaid, with the advice and consent of the Legislative Council aforesaid, to be declared as aforesaid, issued from time to time, approve of, and, by any proclamation to be by him shall, in that behalf, from time to time publish and announce. Provided always, that when and so soon as the monies, if any, due and owing by any such board in respect of sums by such board borrowed and taken up as aforesaid, for the purposes of all or any of the works under the management or administration of such board, shall have been, by such board, paid off and satisfied, then and in that case, all tolls and rates payable to such board shall, as much as may be, be lowered to and fixed at such a scale or tariff, as shall yield an amount not exceeding the probable average annual expense of maintaining and repairing the works aforesaid, and further improving the port or harbour in or about which such works shall have been made. And such reduction shall be made by the Governor aforesaid, by any such Proclamation as aforesaid.

Boards may let to hire tolls, &c., by auction or tender; condition of the lease.

16. And be it enacted, that every such board may, from time to time, if it shall deem it to be expedient, let or farm the tolls and rates to be payable in regard to the use of any pier, harbour, quay, landing place, engine, moorings, or other work, vested in such board, by tender or by public auction, to the highest and best bidder, for any time not exceeding one year in any case: provided always, that previously to every letting of such tolls or rates, the said board shall give, in some convenient manner, public notice of the time and place at which tenders will be received, or any such auction as aforesaid will take place; and that the person who shall at any such auction be declared to be the highest bidder, or whose tender shall be accepted, will be required to produce two sufficient sureties for the payment of the stipulated hire; and provided also that in every letting of such tolls or rates,

whether by tender or by auction, the said board shall require the farmer or renter thereof, to enter into a bond, with not less than two responsible sureties, each binding himself as principal debtor for the payment of the whole rent or hire of the said tolls, at the time and in the manner in that behalf to be in the said bond specified; and in case any instalment or payment of such rent or hire shall be in arrear and unpaid for the space of three days after the same shall have become due, then it shall be lawful for the said board to enter into, and take possession of, the said tolls or rates, and of all toll houses or other buildings of which the renter or farmer in default would otherwise be entitled to the use, and to re-let the said tolls, or otherwise to place a collector or collectors in receipt thereof, and in possession of the said houses and buildings, as to them may seem fit; and the sum for which the said renter or farmer shall have been in default, together with all further instalments or payments stipulated to be made by the said farmer or renter, shall be due and demandable from him, in like manner and form as if he still remained in receipt of the said tolls or rates, credit being given to him by the said board for whatever sums they shall receive for or on account of the said tolls, in respect of the term for which the said rates or tolls were let to the renter or farmer making default.

Tables of Tolls how to be affixed.

17. And be it enacted, that the said board, or in case of any letting to hire every renter or farmer of any tolls or rates, shall affix, or cause to be affixed, and continued in a conspicuous place, at or near which any rate or toll shall be payable, a table of the rates or tolls to be taken thereat, plainly and legibly painted or printed in the English language, under a penalty not exceeding five pounds, to be sued for by any person whatever, in any competent court, for his own use.

Governor and Legislative Council to determine whether or not all articles, or only articles voluntarily conveyed to the Pier, &c.,—shall be subject to Tolls.

18. And be it enacted, that it shall and may be lawful for the Governor aforesaid, with the advice and consent as aforesaid, to be declared as aforesaid, when and as often as he shall, with such advice and consent, approve of any tolls or rates to be levied and paid for and in respect of any pier, harbour, quay, landing place, engine, moorings, or other work, as aforesaid, to fix and determine, and by any such proclamation as aforesaid, publish and announce, whether such tolls or rates shall be levied and paid upon or in respect of every rated article, matter, or thing, landed or shipped at or in any part of the port, harbour, or roadstead, in question, or only upon or in respect of such rated articles, matters, or things, as shall voluntarily be brought or taken to the pier, harbour,

quay, landing place, engine, moorings, or other work aforesaid, in regard to the use of which such tolls or rates shall be imposed. And when and as often as any tolls or rates shall be imposed upon or in respect of all rated articles, matters, and things, landed or shipped at or in any part of any port, harbour or roadstead, the Governor aforesaid, with the advice aforesaid, shall, by any such proclamation as aforesaid, publish and announce the limits of such port, harbour, or roadstead, for the objects and purposes of such tolls or rates, and the levy and payment thereof, but not otherwise. Provided always, that no toll or rate in respect of the use of any moorings which shall be put down or fixed by any such board as aforesaid, shall be claimed from or be payable by any vessel other than one which shall, by the voluntary act of the master, or person in charge, have made use of the said moorings.

Boards may appoint Collectors, &c.

19. And be it enacted, that it shall and may be lawful for any such board as aforesaid, in cases in which any tolls or rates as aforesaid shall not be leased or let, or for the lessees or lessee of such tolls or rates, if leased or let, from time to time to appoint, by and with the approbation of the Governor aforesaid, sufficient collectors, and officers, or agents, for the purpose of receiving the tolls or rates payable under this ordinance, and in case any person liable to pay such tolls or rates shall refuse or neglect to pay the same, it shall be lawful for such board, or for the lessees or lessee of the said tolls or rates, or their officer or agent, or other person to whom such toll or rate ought to have been paid, to seize the vessels, goods, articles, matters, and things in respect of which such tolls or rates ought to have been paid, wherever the same may be found, and to detain the same until such tolls or rates, together with the reasonable cost and expense of such seizure and detention shall be paid; and if such vessels, goods, articles, matters and things shall not be redeemed within twenty-one days after the seizure thereof, the same shall be sold by public sale, and after deducting the costs of such seizure, detention, and sale, all such sums as shall be due in respect of such tolls or rates shall be satisfied thereout, and the overplus paid to the owner, or whomsoever else it may concern.

Penalties for wilful injuries to Piers, &c.

20. And be it enacted, that if any person or persons shall wilfully cut, break down, destroy, or injure, any pier, harbour, quay, landing place, engine, moorings, or work of any kind whatever, erected or made under the authority of this ordinance, it shall be lawful for any person or persons who shall see the offence committed, to

apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this ordinance, and without any warrant, to deliver him or them to any field-cornet, constable, or peace officer, who is to keep him or them in safe custody, and with all reasonable despatch to convey him or them before the resident magistrate within whose district the offence shall have been committed; and if the party accused shall be convicted of any such offence by any such resident magistrate, he or they shall forfeit severally and respectively any sum not exceeding three pounds for every such offence, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeit shall be paid to the person or persons apprehending such offender or offenders, and the other moiety shall be paid to the board of commissioners in which the work so injured, as aforesaid, shall be vested, to be by the said board applied for the purposes of this ordinance; and in case any such offender shall not upon such conviction pay the said forfeiture and satisfaction, such magistrate is hereby required to commit him to prison, there to be kept to hard labour, if such magistrate shall so order, for any time not exceeding three calendar months, unless the said forfeiture and satisfaction be sooner paid; Provided always, that nothing herein contained shall prevent the said board from bringing any action for damages before the supreme or any circuit court having jurisdiction, should they consider the amount of such damages to exceed the jurisdiction of any resident magistrate.

Proceedings in regard to injuries done without lawful cause.

21. And be it enacted, that if any person shall, without lawful cause, do damage or injury to any of the matters or things in the last preceding section mentioned, it shall be lawful for any resident magistrate having jurisdiction, and he is hereby required, upon the application or complaint of the board of commissioners in which shall be vested the work to which such damage or injury shall have been done, to summon the party complained of, and upon hearing the parties on both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and to award such sum of money, by way of satisfaction to the party complaining, for such damage, as to such resident magistrate shall appear reasonable; and in case of neglect or refusal forthwith to pay such money, together with all expenses attending the recovery thereof, it shall be lawful for such resident magistrate to sentence the party so neglecting or refusing to any period of imprisonment not exceeding fourteen days:

provided, however, that nothing herein contained shall prevent any such board from bringing any civil action for damages against any person doing such damage or injury as aforesaid, before the supreme court, or any circuit court having jurisdiction, should they consider the amount of such damages to exceed the jurisdiction of any resident magistrate.

Mode of keeping, publishing and auditing the accounts of said Boards.

22. And be it enacted, that every such board shall, and it is hereby required, to cause a true, exact, and particular account to be kept, and yearly made up and balanced, —that is to say, on the 31st day of December in each year, of all the moneys raised, collected, or in any manner received by the said board, or by any person on their behalf, by virtue of or for the purposes of this ordinance, and of the charges and expenses incurred by the said board, and a copy of such account, together with all necessary vouchers, shall be transmitted by the said board to the Governor of the colony for the time being, in order to the same being audited by such person or persons as the said governor may from time to time appoint, and afterwards laid by the said governor before the Legislative Council; and the said board shall also cause an abstract of the said account to be published without delay, in the *Government Gazette*, for general information.

Boards to report annually.

23. And be it enacted, that every such board shall, and it is hereby required, when transmitting such yearly account as aforesaid, to transmit also a report made up to the 31st day of December in each year, detailing all and singular the particulars of every work which such board shall have commenced, carried on, or completed during the year then ended; which report shall, by the Governor aforesaid, be laid before the Legislative Council.

No Member to receive salary,—or be a contractor.

24. And be it enacted, that no person appointed under and by virtue of this Ordinance to be a member of any such board as aforesaid, shall have or receive any salary or allowance, or shall exact, accept, or take any fee or reward whatsoever, on any account whatsoever, relative to carrying this Ordinance into execution; nor shall any such person be eligible to become a contractor with the board of which he shall be a member, for the doing of any work or the supplying of any materials, articles, or things contemplated by this ordinance; nor shall such person, directly or indirectly, be interested or concerned in any such contract as last aforesaid, under a penalty not exceeding one hundred pounds.

Boards, how to be sue and be sued.

25. And be it enacted, that in any action or suit which shall or may be brought for the recovery of any penalty or sum of money due or payable by virtue of this

ordinance, or for or in respect of any other matter or thing relating to this ordinance, by or against any such Board of Commissioners as aforesaid, it shall and may be lawful for the said board to sue or be sued by the style or title by or under which such board shall have been appointed by the Governor aforesaid,—and in all criminal proceedings the same style may be used. Provided always, that no member of any board shall be deemed or taken to be an incompetent witness in any such suit, action or proceeding, by reason of his holding the said office; and provided also, that the said members shall always be reimbursed, out of the monies to arise by virtue of this ordinance, all such costs, charges, and expenses as they shall be put to or become chargeable with, by reason of bringing or defending any action or suit, unless such action or suit shall arise from their own gross negligence or wilful default.

Ordinance not to extend to Natal.

26. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal.

Ordinance, when to commence.

27. And be it enacted, that this ordinance shall commence and take effect from and after the promulgation thereof.

No. 22,—1847.] ORDINANCE [Oct. 29, 1847.

For establishing certain Rules in Court.

Preamble.

Whereas the Honorable the Supreme Court of this Colony was pleased to promulgate, upon the 4th day of February 1845, and the 13th day of August 1846, respectively,—the three certain rules or orders of the said court, which are set forth in the schedule hereunto annexed: And whereas it is expedient that the said rules and orders should be established as law; Be it therefore enacted by the Governor of the colony, with the advice and consent of the Legislative Council thereof, that the said three rules or orders, as the same are set forth in the said schedule, shall be, and the same are hereby, confirmed and established, and declared to have the force and effect of law.

Ordinance when to commence.

2. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

SCHEDULE.

Rules promulgated in open Court on the 4th Day of February 1845.

212. It is ordered,—that no person who shall heretofore, before the date of the promulgation of this rule, have become

bound by contract in writing, to serve within this colony as a clerk to any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said court, shall, upon the expiration of five years from and subsequent to the date of such contract, be admitted and enrolled as an attorney of and in the supreme court, in terms of the provisions of the 22nd section of the royal charter, unless such contract shall be enrolled and registered with the registrar of this court, together with an affidavit of the time of the execution of such contract by such clerk; and in case any such contract shall not be so enrolled and registered with the registrar at his office, within three calendar months from the said date of promulgation of this rule, together with such affidavit of the execution of such contract, then and in such case the service of such clerk thenceforward from and after the date of such promulgation of this rule, shall be deemed and taken to be good and effectual service, under such contract, only from and subsequent to the time of such enrolment and registry, any usage or custom to the contrary notwithstanding.

213. It is ordered,—that no person who shall, after the date of the promulgation of this rule, become bound by contract in writing to serve, within this colony, as a clerk to any barrister, advocate, attorney, solicitor, or proctor, duly admitted to practise in the said court, during the term of five years from and subsequent to the date of such contract, shall be admitted and enrolled as an attorney of and in the supreme court, in terms of the provisions of the 22nd section of the royal charter, unless such contract shall be enrolled and registered with the registrar of this court, at his office, together with an affidavit of the time of the execution of such contract by such clerk, and in case any such contract shall not be so enrolled and registered with the registrar within three calendar months, together with such affidavit of the time of the execution of such contract, then and in such case the service of such clerk under such contract, shall be deemed to commence from the time of such enrolment and registry, and not from the execution of such contract, any usage or custom to the contrary notwithstanding.

By the Court,

T. H. Bowles,

Registrar of the Supreme Court.

Rule promulgated in Open Court, on the Thirteenth Day of August 1846.

214. It is ordered,—that when a defendant has by his default been debarred from pleading, and the case has been set down for trial as undefended, and the defaults and requisite notices duly proved, the defendant shall not be permitted, either personally or by counsel, to appear, or in any way to interfere in the trial of the said cause or proceedings thereon.

By the Court,

T. H. Bowles,

Registrar of the Supreme Court.

No. 23,—1847.] ORDINANCE [Dec. 28, 1847.

For reducing the Postage upon Religious Publications of or under a certain weight.

Preamble.

WHEREAS there is reason to believe that the diffusion of Religious Knowledge, by means of Religious Periodical Publications, is much restricted by the rate of Postage to which such Publications, even when they do not exceed an ounce in weight, are by law subjected; and whereas it is expedient to reduce the Postage upon Religious Periodical Publications not exceeding one ounce in weight to one penny,—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of Ordinance No. 1, of 1846, entituled "Ordinance for the Regulation of the Post Office and Postage,"—as is repugnant to, or inconsistent with, any of the provisions of this Ordinance, shall be repealed, and the same is hereby repealed accordingly.

So much of Ordinance No. 1, of 1846, as is repugnant to this Ordinance, repealed.

Religious Periodical Publications,—what Postage to pay.

2. And be it enacted, that all Religious Periodical Publications printed in this Colony, and not exceeding one ounce in weight, shall be carried by Post from any Post Office within the Colony, to any other Post Office within the same, and there delivered, upon being prepaid, for Postage, one penny: Provided always, that nothing herein contained shall extend to any Publication which shall not be certified to the Governor for the time being, by one Minister, or more, of some denomination of Christians, to be a Religious Periodical Publication, nor to any which the said Governor shall not authorise the Post-master-General of this Colony, for the time being, to receive and convey at the reduced rate of Postage provided by this Ordinance.

Commencement of this Ordinance.

3. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 24,—1847.] ORDINANCE [Dec. 28, 1847.

For Improving the Gaols of this Colony.

Preamble.

WHEREAS several of the buildings used as Public Gaols in this Colony are in a very defective state and condition, owing to which it is difficult to prevent prisoners from escaping, or to classify prisoners properly, or introduce to any extent, any uniform or efficient system of management in regard to such gaols: And whereas it is intended, as soon as may be, to cause the said defective gaols to be improved, and it is therefore expedient to provide

for the establishment of an uniform and efficient system of prison discipline:—Be it enacted by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor aforesaid, with the advice of the Executive Council of the Colony, to make such rules for the government of the several gaols of this colony, respectively, and for the duties to be performed by the several officers of the same, as the said Governor shall deem expedient, and such rules, from time to time, to alter and amend; and all such rules, so made, shall be binding upon the keeper of the gaol, and all other persons therein. Provided always, that all such rules shall be consistent with the provisions of this Ordinance, and that no such rule shall, except so far as by this Ordinance provided, be competent to impose any punishment or penalty, for or on account of any breach thereof, by any person whomsoever, save only dismissal from office, in the case of persons employed in Her Majesty's Service.

Governor, with advice of Executive Council, may frame Prison Regulations

2. And be it enacted, that the keeper of every gaol shall be appointed by the Governor aforesaid, and shall be under the immediate authority and superintendence of the resident magistrate of the district in which the gaol in question shall be situate; and shall, in virtue of his office, be a constable and possess all the powers by law belonging to the office of constable; and shall reside within the prison of which he is keeper, and shall not employ himself in any other occupation.

Keeper of Gaol, how appointed; - to be under authority of Resident Magistrate, and to be a Constable.

3. And be it enacted, that neither the keeper of any prison nor any other officer in any prison shall sell, nor shall any person in trust for, or employed by him, sell, or have any benefit or advantage from the sale of, any article to any prisoners, nor shall he, directly or indirectly, have any interest in any contract or agreement for the supply of the prison to which such keeper or other officer shall belong. And any person contravening any of the provisions of this section, shall be liable to forfeit any sum not exceeding one hundred, and not less than five pounds.

No officer in any prison to be concerned in furnishing its supplies

4. And be it enacted, that male and female prisoners shall be confined in separate parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other, and that the prisoners of each sex, shall be divided into distinct classes, care being taken that prisoners of the following classes respectively, do not intermix with each other,—

Classification of Prisoners.

a. Persons confined under any decree of civil imprisonment.

b. Persons committed for want of sureties to keep the peace.

c. Persons committed for murder, culpable homicide, rape, robbery, or assault with intent to commit any of those crimes, or in which any dangerous wound is given, arson, housebreaking with intent to commit any crime, or theft of any cattle, sheep, or goats, or other crime of equal degree of guilt with any of the said crimes.

d. Persons committed for any crime of a lesser degree of guilt than any of the crimes aforesaid.

e. Persons convicted of any such crime as is hereinbefore, in letter c, set forth.

f. Persons convicted of any such crime as hereinbefore, in letter d, set forth.

Provided always, that it shall be lawful for the governor aforesaid, by any such rule as aforesaid,—to suspend the execution of all, or any, of the provisions of this section, in regard to any gaol in which the means of carrying the same into effect do not yet exist.

Keeper to have a journal for recording occurrences in the Gaol.

5. And be it enacted, that the keeper of every prison shall keep a journal, in which he shall record all occurrences of importance within the prison, in such manner as shall be directed by the rules aforesaid, to be made by the governor aforesaid; which journal shall be produced to the resident magistrate of the district, upon the occasion of every periodical visit by such magistrate, as hereinafter directed, and shall be signed by him in proof of the same having been so produced.

Prison rules may regulate supply of food and clothing to Prisoners.

6. And be it enacted, that it shall and may be lawful for the governor aforesaid, by any such rule as aforesaid, to regulate the supply of food and clothing, and other necessaries of the prisoners in any gaol. Provided always, that prisoners confined before trial for any supposed crime or offence, shall be allowed to procure for themselves, and receive at proper hours, any food, bedding, clothing or other neccessaries, subject to a strict examination, and under such limitations and restrictions, to be prescribed by any such rule or rules as aforesaid, as may be deemed necessary to prevent extravagance or luxury within the walls of the prison, and to exclude all articles which might possibly communicate infection or facilitate escape.

Proviso regarding Prisoners before trial.

Prison rules shall provide for cleanliness of person and apparel, in regard to Prisoners.

7. And be it enacted, that it shall and may be lawful for the said governor, by any such rule as aforesaid, to provide for securing the cleanliness, in regard to person and apparel, of every prisoner admitted into any prison, in such manner, however, as to resort, as little as may be consistent with the end in view, to any means of securing

cleanliness to which the prisoner shall object. Provided always, that the apparel of every such prisoner, after being, if requisite, fumigated and purified, shall be returned to him, and that no prisoner, before trial, shall be compelled to wear a prison dress, unless his own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice.

Keeper shall not punish any Prisoner without authority, but may place refractory Prisoners temporarily in irons.

8. And be it enacted, that no keeper of any prison shall, without the order of the resident magistrate first had and obtained, punish any prisoner for any offence or supposed offence, under any pretext whatsoever: Provided, however, that when and as often as it shall be urgently and absolutely necessary to secure any refractory prisoner or any prisoner contriving to escape, pending the arrival of the magistrate, the keeper may, by his own authority, place such prisoner in irons; and such keeper shall, in every such case, make an entry in his journal, recording the particulars thereof, and shall, without loss of time, send notice to the resident magistrate of what has taken place.

Rules to fix periods of prison visiting.

9. And be it enacted, that it shall and may be lawful for the governor aforesaid, by any such rules as aforesaid, to fix the times and occasions upon which the resident magistrate of the district shall visit and inspect the gaols thereof, to which rules in that behalf, such magistrate shall conform.

Resident Magistrate may punish offences against discipline and good order.

10. And be it enacted, that when in the course of any visit to, or inspection of, any goal, which it shall be the duty of any resident magistrate to visit and inspect, it shall be proved to the satisfaction of such magistrate, that any prisoner has wilfully disobeyed any lawful order, or has shown violence or insolence to the keeper of the prison, or any other officer thereof, or has been guilty of profane cursing and swearing, or of using indecent words, or of any indecent behaviour, or has used to any person intimidating language or threatening acts, or has wantonly destroyed or injured any food, clothing, or other matter or thing entrusted to him to use, or has committed any wilful act of disorder, or breach of the prison discipline, such resident magistrate may order any such prisoner, so offending, to be placed in solitary confinement, with or without spare diet, for any period not exceeding seven days, or to be kept in irons for any period not exceeding seven days, or to receive personal correction by any number of lashes not exceeding twenty-five, or to be kept at hard labor, either within or without the prison, for any period not exceeding twenty-one days. Provided always, that the name of the offender, the nature of the offence, and

Punishments which may be inflicted.

the punishment ordered, shall be recorded in the journal of the prison keeper. Provided also that no prisoners, save those under sentence of imprisonment with hard labor, shall be liable to receive personal correction.

Except as before provided, no prisoner to be placed in irons or in the stocks.

11. And be it enacted that, except for the causes, and under the circumstances aforesaid, no prisoner, before trial, shall be put in irons, or in the stocks, or be fastened or fettered in any manner whatsoever, whether by way of security against escape or otherwise, unless, for reasons moving him thereto, the resident magistrate shall, in special cases, authorise, by writing inserted in the keeper's journal, a departure from this rule.

Exception.

Certain crimes connected with escapes and attempts to escape which may be tried in courts of Resident Magistrate.

12. And be it enacted that if any prisoner shall make his escape from gaol, or attempt to make his escape, or conspire or confederate with any other prisoner or other person, to make the escape of both or either of them, or shall supply any other prisoner with any implement, matter, or thing, intended to aid such other prisoner in making his escape; such prisoner may be tried for such offence before the court of resident magistrate of the district in which such gaol shall be situated, and upon conviction, may be sentenced to undergo any punishment which such magistrate shall, for the time being, have power and authority to award.

Rules to fix circumstances under which alone Spirits &c., shall be introduced into prison.

13. And be it enacted, that it shall and may be lawful for the governor aforesaid, by any such rules as aforesaid, to fix and prescribe the circumstances under which any spirituous or fermented liquor may be carried or brought into any gaol; and if any person shall, in contravention of any such rule, carry or bring, or attempt to carry or bring, into any gaol, any spirituous or fermented liquor, it shall be lawful for the keeper, or any other of the officers of such gaol, to apprehend or cause to be apprehended such offender, and to bring him before the court of resident magistrate for the district at its next sitting (which court is hereby empowered to hear and determine such offence in a summary way), and such offender, if convicted, shall be liable to pay any fine not exceeding £20, and not less than £5, and in default of payment shall be liable to be imprisoned for any period not exceeding two months, with or without hard labor.

Penalty for breach of any such rule.

Penalty on Officers, &c., breaking any such rule as last mentioned.

14. And be it enacted, that if any keeper or other officer of, or person employed in, any gaol, shall sell, lend, or give away to any prisoner, any spirituous or fermented liquor, or knowingly permit or suffer to be received, or used by any prisoner, any such liquor, contrary to any such rule as aforesaid in that behalf, such keeper or other officer, or other person, being convicted of such

offence by the court of resident magistrate for the district (which court is hereby empowered to hear and determine such offence), shall be liable to pay any fine not exceeding £40, and not less than £10, and in default of payment shall be liable to be imprisoned, with or without hard labor, for any period not exceeding three months.

No gaming to be allowed in prisons.

15. And be it enacted, that no gaming shall be allowed in any gaol, and that the keeper, and other officers and persons employed in any gaol, shall be authorised, and he and they are hereby required, to seize and destroy all cards, dice, or other instruments of gaming.

No fees payable by Prisoners.

16. And be it enacted, that no fee or gratuity shall be paid or payable by any prisoner, either on his entrance, commitment to, continuance in, or discharge from any gaol, either to the keeper, or his servants, or any officer of, or person employed in the gaol, and any keeper or other officer or person receiving or demanding any such fee or gratuity, shall for every such offence forfeit any sum not exceeding Ten Pounds.

Returns, as provided by Prison Rules, to be prepared by Resident Magistrate.

17. And be it enacted, that the resident magistrate of every district shall, as often as shall by any such rule as aforesaid be required, prepare and transmit to the governor of this colony, periodical returns, showing the name and description of every person confined in the said gaol, by whom such person has been committed, the cause or grounds of his imprisonment, the date of the warrant of committal or other order or authority for such imprisonment, the number and employment of the various officers or other persons employed in the gaols, and all such other matters as, by any such rule as aforesaid, shall be required to be included in such return.

Certain rules and provisions shall be fixed up in each prison.

18. And be it enacted, that so much of this Ordinance, and so much of any such rules as aforesaid, as relates to the treatment and conduct of prisoners, shall be printed in legible characters both in the English and Dutch languages, and fixed up in conspicuous parts of every prison, so that all persons may have access thereto.

Judge and Superintendent of Police to visit all Cape Town gaols.

19. And be it enacted, that in regard to any gaol situate in Cape Town or the district thereof, the Judge and Superintendent of Police of Cape Town, and not the Resident Magistrate of Cape Town, shall be invested with the right and charged with the duty of visiting and inspecting the same; and the keeper of any such Goal shall be under his authority and superintendence; and such Judge and Superintendent of Police shall exercise every power and perform every duty hereinbefore confirmed or imposed upon any Resident Magistrate acting out of Court.

20. And be it enacted, that in the interpretation of this Ordinance, the term governor shall mean the officer administering the government of this colony for the time being; and that whensoever mention is made of any public officer, the officer so mentioned shall be deemed to be such officer for the time being, or the officer for the time being acting as such; and that words importing the singular number shall respectively be understood to include several persons matters and things, as well as one person, matter or thing; and that words importing the masculine gender shall respectively be understood to include females as well as males, unless there be something in the subject or context repugnant to such construction. Interpretation clause.

21. And be it enacted, that nothing in this Ordinance contained shall extend to the District of Natal. Ordinance not to extend to Natal.

22. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof. Ordinance when to commence.

No. 25,—1847.] ORDINANCE [Dec. 29, 1847.

For improving the Police of the Colony.

Whereas it is intended to augment, and render more efficient, the Police of the several country districts of this colony:—Be it enacted by the Governor of the colony of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that it shall and may be lawful for the Governor of this colony, for the time being, to nominate and appoint from time to time, as occasion may require, in every district of this colony, other than Cape Town and the district thereof, some fit and proper person to be the head of the police force of such district, who shall be called and styled "chief constable of the district of———." Preamble. Chief Constable.

2. And be it enacted, that every such chief constable shall, before entering upon the duties of his office, take the oath of allegiance, and also subscribe the declaration of office following, that is to say, "I, A. B., do declare that I will truly and faithfully, to the best of my ability, without fear, favour, or affection, perform the duties of chief constable of the district of———;" which oath and declaration the resident magistrate of the district is hereby authorised to receive. Oath of Allegiance,—Declaration of office.

3. And be it enacted, that such chief constable shall have and possess all the powers and authorities of a constable, as in the next succeeding section more particularly described, and he shall be under the authority and control Chief Constable: powers and duties.

of the resident magistrate of the district, and shall, as such chief constable, yield obedience to all the lawful commands of such resident magistrate, and shall constantly report to such resident magistrate all cases of crimes or offences which shall come to his knowledge.

Resident Magistrate, with consent of Governor to nominate Police.

4. And be it enacted, that it shall and may be lawful for the resident magistrate of every district, other than Cape Town and the district thereof, with the consent of the Governor aforesaid, to nominate and appoint so many fit and proper men as may be necessary to be and constitute the police force of such district, who shall be sworn in by such magistrate to act as constables for preserving the peace, preventing the commission of crimes, and apprehending offenders, when crimes have been committed; and the men so sworn shall, within the said district, have all such powers, authorities, privileges, and advantages, and perform all such duties, and incur all such responsibilities, as any constable duly appointed now has, or hereafter may have, within his constablewick or assigned district, by virtue of any law or ordinance existing or to exist in this colony, and shall obey all such lawful commands, touching the manner in which they shall conduct themselves in the execution of their office, as they may from time to time receive from their lawful superiors, as the latter shall be constituted, named, and specified in the rules and regulations to be hereafter framed.

Powers and duties of Constables.

Magistrate, with Governor's approval, to frame Rules, &c., for Police Force.

5. And be it enacted, that the resident magistrate of each district, subject to the approval of the Governor aforesaid, shall and may from time to time frame such rules and regulations as the said magistrate shall deem expedient, relative to the general government and management of the men so as aforesaid to be appointed members of the police force of such district, the classification, rank, and particular duty of the several members, their distribution and inspection, the description of arms, accoutrements, and other necessaries to be furnished to them, and which of them shall be provided with horses for the performance of their duty, and all such other rules and regulations, relative to the said police force, as the said magistrate shall from time to time deem expedient for preventing neglect of duty or abuse of authority, and for rendering such force as efficient as possible for the performance of its duties.

Chief Constable may suspend members of the Force.

6. And be it enacted, that the chief constable of the district, with the consent of the resident magistrate thereof, may suspend from his employment any man belonging to the police force of that district whom he shall deem guilty of misconduct, or negligent or remiss in the discharge

of his duty, or otherwise unfit for the same. But no man belonging to such force shall be dismissed save by the said Governor; and when and as often as any man shall be dismissed or shall cease to belong to such force, all powers vested in him as a constable, by this ordinance, shall immediately cease and determine.

Governor to dismiss.

7. And be it enacted, that any constable. belonging to the police force of any district, who shall be guilty of any neglect or violation of duty in his office of constable, as the same shall be defined by the rules and regulations to be hereafter framed, shall be liable to a penalty not exceeding ten pounds, which penalty may be deducted from any salary then due to such offender, or such offender may, in the discretion of the resident magistrate of the district (who is hereby authorised and empowered to enforce, in a summary manner, all penalties to be incurred under this section as well as under the section next succeeding), be imprisoned for any term not exceeding one month; but no such penalty or punishment shall be held or taken to exempt such constable from any other penalty or punishment which may, by any other law, be affixed to any illegal act or acts of which he may be guilty.

Infringement of Rules, —Penalty £10.

8. And be it enacted, that no constable belonging to any such police force shall be at liberty to resign his situation, or withdraw himself from the duties thereof, unless expressly permitted so to do by the chief constable in writing, or unless he shall give to such chief constable two full months' notice of his intention; and every constable who shall so resign or withdraw himself, without such leave or notice, shall be liable to forfeit all arrears of pay then due to him, or to a penalty not exceeding ten pounds, or to imprisonment for any term not exceeding one month, as to the resident magistrate of the district shall seem best and most expedient.

No Constables to resign, except with permission or two months' notice.

9. And be it enacted, that every constable belonging to any such police force, who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver over to the chief constable all the clothing, accoutrements, appointments, and other necessaries which may have been supplied to him for the execution of his duty, or who shall wilfully or maliciously injure any of the said articles, so as to render the same valueless or of less value, before delivering the same over, shall be liable to imprisonment for any time not exceeding two months; and it shall be lawful for the resident magistrate of that district, to issue his warrant to search for and seize, for the use of the said police force, all the clothing, accoutrements, appointments, and other necessaries

Dismissed Constable not delivering, or injuring, Clothing,—Punishment.

which shall not so be delivered over, wherever the same may be found.

Persons possessing clothing, and not accounting for same, Punishment.

10. And be it enacted, that every person, not being a member of any such police force, who shall have in his possession any article being part of the clothing, accoutrements, or appointments supplied to such member, and who shall not be able satisfactorily to account for his possession thereof, shall be liable to a penalty not exceeding ten pounds, or, in the discretion of the magistrate before whom he shall be convicted, to imprisonment for any term not exceeding one month.

Public-house keepers harbouring Constables, --Penalty £10.

11. And be it enacted, that if any owner or keeper of any house, shop, store, or other place for the sale of any liquors, whether spirituous or otherwise, shall harbour or entertain any constable belonging to any such police force, or permit such constable to remain in his house, shop, store, or other place as aforesaid, for any part of the time during which to his knowledge such constable should be on duty, every such owner or keeper as aforesaid shall, for every such offence, be liable to forfeit and pay any sum not exceeding ten pounds, and in default of payment thereof shall be liable to imprisonment for any term not exceeding one month.

Constables on duty not to be employed on private business.

12. And be it enacted, that no constable, during any part of that time during which he shall be on duty, shall be employed by any resident magistrate, or chief constable, or other public officer, in any sort or description of private business, work, or labor, under any circumstances or pretext whatsoever.

Assaulting or resisting Constable,—Penalty £10.

13. And be it enacted, that every person who shall assault or resist any person belonging to any such police force, in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not exceeding ten pounds, or the offender may, in the discretion of the magistrate before whom he shall be convicted, be imprisoned for any term not exceeding one month.

Police Force to suppress tumults, &c.

14. And be it enacted, that the said chief constable, and the police under his command, shall, as much as in them lies, suppress all tumults, riots, affrays, or breaches of the peace, within the limits of their district, and enforce every Law or Ordinance made or to be made for the due observance of the Lord's Day, for the regular and decent conduct of houses licensed to retail wines or other liquors, for preventing the opening of such houses on improper days, and at improper hours, for the suppression of unlicensed tippling houses, for the punishment of drunkenness, and, generally, for every purpose connected with the good order and tranquility of the said district.

15. And be it enacted, that the chief constable, and any constable who shall by the said chief constable be specially nominated and appointed for the purpose, but not any other constable, shall and may, from time to time, and at all times, as often as they shall have reasonable and probable ground for suspecting that any retail dealer, licensed under the Ordinance No. 29 of 1846, is selling at unlawful or prohibited days or hours any of the liquors in the said Ordinance mentioned, demand admittance into the premises of such dealer for the purpose of examining the same. And if such dealer shall wilfully and intentionally refuse to admit such chief constable or constable, be declaring his official character, or if such dealer shall wilfully and intentionally make any unnecessary delay in admitting the said parties, such dealer shall be liable for such offence to any penalty not exceeding five pounds, or in default of payment thereof, shall be liable to imprisonment for any term not exceeding one month.

Certain persons empowered to demand entrance into certain houses.

16. And be it enacted, that it shall be lawful for either of the persons in the last section mentioned, and empowered for the purpose therein stated, to require admittance into any lodging or other house, or into any apartments in any house within their district, not being a licensed house, in case there shall appear, either from the fact that persons are seen coming out therefrom in a state of intoxication, or from any other fact of a like nature, or from private information given, just and reasonable ground for believing that spirituous or other liquors are being sold therein, for the purpose of examining the same. And if the occupier of any such house or apartment shall wilfully and intentionally refuse to admit such person as aforesaid (such person as aforesaid duly declaring his official character) or if such occupier shall wilfully and intentionally make any unnecessary delay in admitting such person as aforesaid, such occupier shall be liable, for such offence, to any penalty not exceeeding five pounds sterling, or, in default of payment thereof, shall be liable to imprisonment for any period not exceeding one month.

Same persons empowered to enter certain other houses.

17. And be it enacted, that it shall and may be lawful for the members of any such police force to prevent, abate, and suppress all such nuisances and offences within any municipality situated in their district, as shall be punishable by any municipal regulations of such municipality, and they are hereby empowered to arrest, without warrant, any person whom they shall see in the actual commission of any such nuisance, or who shall be charged by any street-keeper or other officer of the said munici-

Police to suppress nuisances defined under Municipal Regulations; and may arrest in certain cases.

pality, or any other credible person, with having recently committed any such nuisance; provided there shall exist reasonable ground for apprehending that, except by arresting the party so offending within view of the said constable, or so charged as aforesaid with having offended when not within such view, such party could not be found or made answerable to justice, without delay, trouble, or expense.

Provoking to break the Peace,—Arrest.

18. And be it enacted, that it shall be lawful for the chief constable, or any constable belonging to any such police force, to take into custody, without warrant, any person who shall in any thoroughfare or public place use any threatening, abusive, or insulting words or behaviour, with intent to provoke a breach of the peace, or from which a breach of the peace may be justly apprehended; and every such person so offending shall be liable to a penalty not exceeding forty shillings, and to imprisonment until the same be paid, and may be further called upon, should such a course seem necessary, to find sufficient sureties to keep the peace.

Persons carrrying goods under suspicious circumstances may be brought to station or prison.

19. And be it enacted, that it shall and may be lawful for any member belonging to any such police force, to stop any person or persons whom such member shall find, at any time between sun-set and sun-rise, carrying or transporting any bundle or parcel, or generally any goods of any sort or description whatsoever within his district, and to interrogate such person or persons; and if he or they shall not account satisfactorily for the possession of the goods or articles so being carried or transported, or if there shall be reasonable grounds for suspecting that such goods or articles have been criminally procured, then it shall be further lawful for such member of the said police force, to conduct the said goods and articles, and the person or persons so carrying or transporting the same to the public prison or nearest police station, and to detain such person or persons in custody until the then next sitting of the resident magistrate of such district, who shall inquire into the circumstances and make such determination as shall to him seem fit and proper.

Chief Constables may discharge Prisoners under certain circumstances,—Recognisance.

20. And be it enacted, that whenever any person charged with any offence, not being of a grave or serious character, shall be, without warrant, in the custody of any constable of any such police force, during any time when the court of the resident magistrate is shut, it shall be lawful for the chief constable, if he shall deem it prudent, to discharge such person from actual custody, taking however, but without fee or reward, the bond, obligation, or recognizance of such perons, with or without sureties,

conditioned for the appearance of the person thereby bound, before the said resident magistrate at his next sitting, the time and place of which shall be specified in the said recognizance; and the said chief constable shall enter in a book to be kept for the purpose, the name, residence, and occupation of the party, and of his surety or sureties, if any, entering into such recognizance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognizance to the court at which the party was bound to appear, at the next ensuing sitting of the same.

Gratuities not to be taken.

21. And be it enacted, that no chief constable, or constable of or belonging to any such police force as aforesaid, shall demand or receive from any person whatsoever, any fee, gratuity, or payment for any thing done or abstained from, by such chief or other constable, by virtue or under colour of his office.

Chief and other Constables not to be concerned in Canteens, &c.

22. And be it enacted, that no chief constable or other constable shall, directly or indirectly, be concerned in, or derive any profit or advantage from, any tap, canteen, public house, or inn, within the district, nor from the supply of any rations, transport, matter, or thing to the public gaol, or to the police force of such district, and any chief or other constable contravening any of the provisions of this section, shall forfeit any sum not exceeding one hundred and not less than five pounds.

Criminal process,—Supreme and Circuit Courts.

23. And be it enacted that the chief constable of every district shall diligently and faithfully execute, or cause to be executed, as he shall be by law required, all criminal process of the supreme or any circuit court.

Chief Constable to make certain returns.

24. And be it enacted, that every chief constable shall every morning (unless prevented by some lawful cause,) make a return in writing, to the resident magistrate of the district, showing how each constable of the force has been employed during the hours of duty of the previous day.

Residences of Force to be near District Gaol.

25. And be it enacted, that when and as often as the members of any such police force, as aforesaid, shall not be provided with a place of residence by the Government of this Colony, but shall be required to provide a residence for themselves, such residence shall be fixed as near as may be to the public gaol of the district, and shall be approved of by the resident magistrate.

Chief Constable to discharge, in Towns and Villages, the duties of Field-cornet.

26. And be it enacted, that it shall and may be lawful for chief constables to perform, within the limits of the town or village, in which the office of the resident magistrate of his district shall be situated, all and singular the several duties, which, by law, might be performed within such town or village by the field-cornet of a field-cornetcy

embracing such town or village. Provided that the limits of every town or village shall, for the purpose of this section, be as follows, that is to say,—should the same be or become a municipality, the municipal limits for the time being; and should the same not be a municipality, then the limits of such town or village shall be an imaginary circle drawn at the distance of two miles from the office aforesaid of the resident magistrate.

Penalties when to be applied to Superannuation Fund.

27. And be it enacted, that when and as often as any person entitled, as informer, to any pecuniary penalty or share of any such penalty, under and by virtue of any Law or Ordinance now in force, or hereafter to be enacted, shall refuse or decline to receive such penalty or share thereof, or waive his right thereto, so much thereof as might have been lawfully claimed or demanded by such person shall go to and be received by the trustees of any police superannuation fund, which, under and by virtue of the provisions in the next succeeding sections contained, shall have been formed and be in existence, and be applied to the objects of such fund as hereinafter mentioned.

Superannuation Fund, —Trustees.

28. And be it enacted, that a fund, to be called the police superannuation fund for the district of , shall be created in each and every district of this colony, and that the resident magistrate of such district, and the chief constable of such district, shall be the trustees for the administration of such fund.

Deductions, Stoppages, &c. to go to Fund.

29. And be it enacted, that all such sums as shall arise from such a deduction from the pay of every police constable for the time being, as His Excellency the Governor shall direct, but not being a deduction at a higher rate than that of two pounds and ten shillings in the one hundred pounds in any one year; and all sums to arise from stoppages from the pay of any of the persons aforesaid, on account of sickness; and all sums to arise from fines imposed upon any of the said persons for misconduct in his capacity as a member of the police force, and all sums to arise from fines imposed upon drunken persons and for assaults committed upon members of the said police force; and all sums to arise from the sale of worn or cast clothing supplied to the said force, and all sums to arise from any such penalties or shares of penalties, as are in the 29th section of this ordinance mentioned, shall be paid and handed over to the said trustees, to go and be applied to the said fund.

Trustees to lend out monies on Mortgage.

30. And be it enacted, that the said trustees shall, from time to time, as they shall find opportunity and deem expedient, lend out on the mortgage of immoveable property in this colony, or otherwise, as they shall think

proper, whatever monies belonging to any such police superannuation fund they may from time to time have at their disposal,—and all bonds which shall be taken for any such monies so lent out, shall be taken to be payable to the resident magistrate aforesaid and the chief constable aforesaid, both, for the time being, in their capacity as trustees of such police superannuation fund; and all interest to arise from the investment of the said fund, or so much thereof as shall not be needed for the purposes hereinafter mentioned, shall be again invested for accumulation.

Trustees to submit Annual Accounts to Governor.

31. And be it enacted, that the said trustees shall yearly, upon the 31st of December in every year, frame and lay before His Excellency the Governor, an account showing the amount and state of the said fund up to the said date.

Governor to authorise payment of Rewards.

32. And be it enacted, that it shall and may be lawful for the said Governor to authorize and direct the said trustees to pay, from time to time, from and out of any such fund, such sums of money, by way of reward, to such members of the police force of that district as shall, by extraordinary services, have merited the same.

Superannuation,—Governer to authorise,—scale,—age 50 years, except in certain cases.

33. And be it enacted, that it shall and may be lawful for the said Governor to order that any police constable shall be superannuated, and thereupon to authorise and direct the said trustees to pay, from and out of the proper fund aforesaid, to the party superannuated, such certain yearly allowance as the said Governor shall approve of and prescribe, but subject, however, to the following limitations and conditions:—that is to say, that when and as often as the party superannuated shall have served with diligence and fidelity for any term not less than 15, and not more than 20 years, his yearly allowance may be made equal to, but shall not exceed, one-half of his yearly pay while in active service, which yearly pay shall be taken to be the average of his yearly pay for the three years next preceding his superannuation; and that when and as often as the party superannuated shall have served, in manner aforesaid, for the term of 20 years or upwards, his yearly allowance may be made equal to, but shall not exceed, two-thirds of his yearly pay while in active service, which yearly pay shall be taken to be the average aforesaid: Provided always, that no serjeant of police or police constable who shall be under the age of fifty years, shall be cabable of receiving any such yearly allowance as aforesaid, unless it shall be certified in writing by the judge and superintendent of police, for the time being, that such person, from infirmity of mind or

body, is incapable of discharging the duties of his situation.

Claim of parties disabled in discharge of duty.

34. And be it enacted, that it shall and may be lawful for the said Governor, in case any police constable shall be disabled for the performance of his duty by reason of any wound or injury received by him in the actual execution of his duty, to authorize and direct the said trustees to pay, from and out of the fund aforesaid, to the party so disabled, whatever his age or time of service, such yearly allowance not exceeding the average of his yearly pay for the three years next preceding the time of his receiving the said wound or injury, should he have served so long, and if not, such yearly allowance, not exceeding the average of his yearly pay during his time of service, as the said Governor shall approve of and prescribe.

Allowance not to be claimed as of right.

35. And be it enacted, that nothing in this Ordinance contained shall be construed so as to entitle any police constable to claim, as matter of right, any part or portion of the said fund, or any allowance whatever from or out of the said fund, or to prevent any such person from being unconditionally dismissed.

Chief Constable, not to benefit by Fund.

36. And be it enacted, that no chief constable shall be entitled, either by way of reward for services, or by any allowance or otherwise, to receive any part or portion of the superannuation fund of his district.

Ordinance not to extend to Cape Town Police.

37. And be it enacted, that nothing in this Ordinance contained shall extend to or affect the executive Police of Cape Town and the district thereof.

Construction.

38. And be it enacted, that in the construction of this Ordinance, the term "Governor" shall mean the officer administering the government of this colony for the time being; and that the term "month," whenever the same occurs, shall be taken to mean a calendar month; and that the term "imprisonment," shall embrace imprisonment either with or without hard labour, as the functionary awarding such imprisonment shall adjudge and declare; and that all words importing the singular number only, shall include several persons, matters, and things, as well as one person, matter, or thing; and the words importing the masculine gender only shall include females as well as males, unless there be something in the subject or context repugnant to such construction.

Ordinance not to extend to Natal.

39. And be it enacted, that nothing in this Ordinance contained shall extend to the district of Natal.

Ordinance when to take effect.

40. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

No. 26.—1847.] ORDINANCE [Dec. 28, 1847.

To provide for the Performance in certain Places of certain Duties now performed by Clerks of the Peace.

Preamble.

WHEREAS it is intended, in certain Districts, to dispense with the office of Clerk of the Peace: And whereas it will thereupon become necessary to make other provisions for the performance in such districts of the duties of the said office: And whereas provision has been or will be made by certain other Ordinances, for the performance in such districts of so much of the said duties as relates to the prosecution of crimes, but provision remains to be made for the performance of certain other duties, of a miscellaneous nature, imposed from time to time upon clerks of the peace by certain former Laws and Ordinances:—Be it enacted by the governor of the Cape of Good Hope, with the advice and consent of the Legislative Council thereof, that so much of any former Law or Ordinance as shall be repugnant to or inconsistent with any of the provisions of this Ordinance shall be repealed, and the same is hereby repealed accordingly.

Repugnant laws repealed.

Resident Magistrates to do the duties of Clerks of the Peace as regards contracts of service.

2. And be it enacted, that in any district of this colony, in or for which there shall not be a clerk of the peace, all contracts of service and apprenticeship mentioned in the Ordinance No. 49, and passed on the 14th of July 1828, entituled "Ordinance for the admission into the colony, under certain restrictions, of persons belonging to the tribes beyond the frontier thereof, and regulating the manner of their employment as free laborers in the service of the colonists," and which contracts respectively are, by the said Ordinance, directed to be entered into before or made by the clerk of the peace, shall be entered into before or made by the resident magistrate of such district, who shall do and perform, in that behalf, all and singular the duties imposed upon such clerk of the peace, and such magistrate shall also receive the counterpart of such passes as are in the 2nd section of the said Ordinance mentioned, and shall furnish to the Secretary to Government the list of passes by the said section required from the clerk of the peace.

Clerk of Magistrate's Court, to do duty of Clerk of Peace, as regards expenses of witnesses.

3. And be it enacted, that in regard to all criminal trials in any court of resident magistrate, in any district for which there shall not be a clerk of the peace, the duties touching bills for the expenses of witnesses, by the 4th section of the Ordinance No. 59, bearing date the 2d of April 1829, entituled "Ordinance for regulating the

Payment of the expenses of witnesses attending to give evidence on Criminal Trials and Preparatory Examinations," imposed upon the said clerk of the peace, shall be, and the same are hereby imposed upon, and shall and may be discharged by the clerk of the said court. Provided that in any summary cases before the said court, such witnesses, whether against or in favour of the party accused, as shall have been summoned with the previous approbation or consent of the said clerk, as being in his judgment necessary and proper to be summoned, shall be deemed to be summoned at the instance of the public prosecutor, within the meaning of the said Ordinance, and all other witnesses summoned shall be deemed, for the purposes of the said Ordinance, to be so summoned, by a private prosecutor or by the party accused (as the case may be) and shall be treated accordingly.

Preparatory examination,—Clerk of the Peace to be deemed absent.

4. And be it enacted, that in the cases of all preparatory examinations before the resident magistrate, or any justice of the peace of any district for which there shall not be a clerk of the peace, the clerk of the peace of such district shall, for the purposes of the 5th and 6th sections of the said Ordinance No. 59, be deemed and taken to be absent.

Magistrate to do duties under Ordinance No. 68.

5. And be it enacted, that in any district for which there shall not be a clerk of the peace, the resident magistrate shall do and perform the duties touching the certain notices regarding Jesuits and members of other religious orders of the Church of Rome, which by the 6th section of the Ordinance No. 68, bearing date the 13th of January 1830, entituled "Ordinance for the Relief of His Majesty's Roman Catholic Subjects in this Colony," are imposed upon the clerk of the peace.

Appeal under Masters and Servants' Order in Council.

6. And be it enacted, that the clerk of the peace of the district in which any circuit shall be holden, shall, for the purposes of the 7th section of the 5th chapter of the Order of the Queen's Most Excellent Majesty in Council, bearing date at Windsor, the 27th of August 1842, commonly called the Masters and Servants' Order in Council, be deemed and taken to be the clerk of the peace for the district in which any such judgment, as in the said section mentioned, and which shall come in appeal or review before such circuit court, was made or pronounced.

Matrimonial Court—Magistrate's Clerk to take the place of Clerk of Peace in certain cases.

7. And be it enacted, that in any district in which shall be a matrimonial court or board, under and by virtue of the Ordinance No. 33, made and passed on the 19th of December 1827, entituled "Ordinance for creating Resident Magistrates and Clerks of the Peace in certain Districts and Places of this Colony," or under and by virtue

of any other law or Ordinance, of which court or board the clerk of the peace shall be appointed to be a member, the clerk of the resident magistrate shall be such member in place and stead of such clerk of the peace, in case there shall not be a clerk of the peace in and for such district.

Duties under Ordinance No. 60 to be performed by Resident Magistrate.

8. And be it enacted, that in any district for which there shall not be a clerk of the peace, the duties touching affidavits and affirmations, which, by the Ordinance No. 9, of 1839, entituled "Ordinance for amending Ordinance No. 60, entituled 'Ordinance for preventing the Mischiefs arising from the Printing and Publishing Newspapers and Papers of a Libellous Nature by persons not known, and for regulating the Printing and Publication of such Papers of other respects, and also for restraining the abuses arising from the publication of blasphemous and seditious Libels,'" are imposed upon the clerk of the peace, shall be, and the same are hereby, imposed upon the resident magistrate in such district.

Ordinance not to extend to Natal.

9. And be it enacted that nothing in this Ordinance contained, shall extend to the District of Natal.

Ordinance when to take effect.

10. And be it enacted, that this Ordinance shall commence and take effect from and after the promulgation thereof.

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